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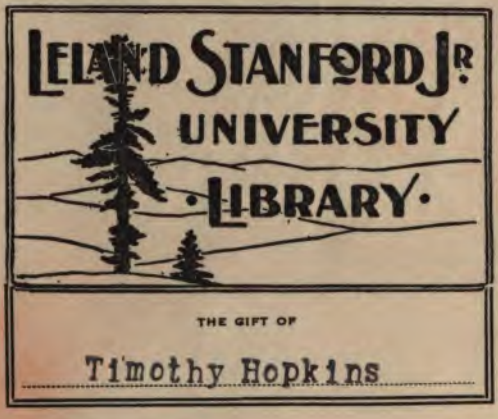
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THIS COUNTRY OF OURS

THIS COUNTRY OF OURS

BY

BENJAMIN HARRISON

EX-PRESIDENT OF THE UNITED STATES

THIRD EDITION

NEW YORK

CHARLES SCRIBNER'S SONS

1898

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PREFACE

THIS volume does not deal at all with the material resources of our country. It has nothing to do with lands, or merchandise, or markets. It is not a philosophical dissertation on civics, nor a commentary on the Constitution. It is a modest attempt to give my readers a view of the machinery of our National Government in motion, and some instruction as to the relations and uses of its several parts. The larger part of the contents of the book appeared in the *Ladies' Home Journal* during the years 1896–97. That text has been carefully revised and much new matter added. The purpose of the book is to give a better knowledge of things that have been too near and familiar to be well known. We stumble over things that are near our toes. I hope it may also tend to promote an intelligent patriotism and a faithful discharge of the duties of citizenship.

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INTRODUCTION

PERHAPS, before entering upon a study of the structure of the Government, it may be well to speak of the relations of the citizen, in a broad way, to the political organization to which our fathers gave the name: The United States of America. God has never endowed any statesman, or philosopher, or any body of them, with wisdom enough to frame a system of government that everybody could go off and leave. To pay taxes and to submit to the laws are far short of the whole duty of the citizen. A government is made strong and effective, both for internal and foreign uses, by the intelligent affection of its citizens. Men may stand with a fair degree of steadiness in the front of battle, out of fear of the provost-guard or of a court-martial, but only a love of the flag will send the line forward with an *esprit* that walls of earth and men cannot withstand. Nothing in the late war between Japan and China—not the wonderful revelation it gave of military equipment and leadership on land and sea, on the part of the

Japanese—was so surprising as the animating and universal spirit of patriotism that the Japanese people displayed. Many young men domiciled in this country hastened home to join the army, and almost to a man, however poor, they sent a money contribution to the war-chest. One of our naval officers told me that each of the Japanese servants on his ship contributed a month's pay—and did it with enthusiasm. The Japanese thought seemed to be, "What can I give to the war?" while the Chinese more often asked, "What can I get out of it?"

A true allegiance must have its root in love. And, since kings have ceased to be the state, and constitutions have put bridles upon rulers, loyalty has a better chance. Institutions have no moods. Since constitutional government has been fully established in England "the king can do no wrong" —the cabinet must answer to the country. There is a love in English hearts, and in all hearts, for the good and venerable woman who for so long has been queen of England, born of her personal virtues; but she is loved by Englishmen more for what she personifies—the government and the glory of England. She is always for the state, never for a party—party management is left to the ministry.

If we would strengthen our country, we must

cultivate a love of it in our own hearts and in the hearts of our children and neighbors; and this love for civil institutions, for a land, for a flag—if they are worthy and great and have a glorious history—is widened and deepened by a fuller knowledge of them. A certain love of one's native land is instinctive, and the value of this instinct should be allowed; but it is short of patriotism. When the call is to battle with an invader this instinct has a high value. It is true that the large majority of those who have died to found and to maintain our civil institutions were not highly instructed in constitutional law; but they were not ignorant of the doctrines of human rights, and had a deep, though perhaps a very general, sense of the value of our civil institutions.

If a boy were asked to give his reasons for loving his mother, he would be likely to say, with the sweetest disregard of logic and catalogues, "Well, I just love her." And we must not be hard on the young citizen who "just loves" his country, however uninstructed he may be. Nevertheless, patriotism should be cultivated—should, in every home, be communicated to the children, not casually, but by plan and of forethought. For too long our children got it as they did the measles—caught it. Now, in the schools, American history and American civil institutions are beginning to have more,

but not yet adequate, attention as serious and important studies.

The impulse of patriotism needs to be instructed, guided—brought to the wheel—if it is to do the every-day work of American politics. Sentiment? Yes, never too much; but with it, and out of it, a faithful discharge of the prosy routine of a citizen's duty. A readiness to go to the field? Yes, and equally to the primaries and to the polls. The real enemies of our country—the dangerous ones—are not the armed men nor the armored ships of the great Powers. If there is too much exuberance in the thought that we can whip the world, it is a safe saying that we can defend our land and coasts against any part of the world that will ever be in arms against us. We are alert as to foreign foes—the drum-tap rouses the heaviest sleepers. But we are a dull people as to internal assaults upon the integrity and purity of public administration. Salvation Army methods seem to be needed in politico-moral reforms. It has seemed to me that a fuller knowledge of our civil institutions and a deeper love of them would make us more watchful for their purity; that we would think less of the levy necessary to restore stolen public funds, and more of the betrayal and shame of the thing. A good argument might be made for the wave theory as applied to patriotism,

for it seems to have its ups and downs. There are eras when it rises to the combing point, and others when greed and selfishness rise above it on either side.

The old-time Fourth of July celebration, with its simple parades and musters, the reading of the Declaration, and the oration that more than supplied the lack of glitter and color in the parade—once the event of the year—went out of fashion. We allowed ourselves to be laughed out of it. It may be that the speaker was boastful, but a boaster is better than a pessimist. The day as a patriotic anniversary was almost lost, and a family picnic day or a base-ball day substituted. It is coming back, and we ought to aid in reinstating it. The old Declaration has a pulse in it and a ring to it that does the soul good. Has your boy ever read it? Have you—all of it? I should like our census-takers to be required to get an answer to that question. I read recently, to a little eight-year-old boy, Macaulay's "Horatius." There was much that was beyond him, but he caught the spirit of the heroic verse, and his eye kindled as I read. Children are eager for true tales of heroism, and our history is replete with them. The story of Washington's army at Valley Forge, told in a familiar way, is better than Macaulay's "Horatius"—for the sufferings at Valley Forge were by

our countrymen, for us. In the home, and before the school-days come, the feelings should be kindled and sentiment awakened. Do not be ashamed to love the flag or to confess your love of it. Make much of it; tell its history; sing of it. It now floats over our schools, and it ought to hang from the windows of all our homes on all public days.

During the Atlanta campaign our army had for weeks been marching and fighting amid the timber and brush, so thick that often the right company could not see the regimental colors. The soldier knew that his corps was in line to the right and left of him; but what a mighty, spontaneous cheer went up one day when the advancing line unexpectedly broke into a long savannah (or meadow) and each regiment with its fluttering banners was revealed to every other. It was an inspiring sight. It is so with the peaceful forces that are enlisted for law and social order and good government. They are revealed now and then under the flag—to the patriot, a security and an inspiration; to the evil-disposed, "terrible as an army with banners." I like to think of the flag as I saw it one night in Newport Harbor. Clouds of inky blackness had extinguished the stars, and only the harbor lights revealed to our pilot the path to the sea. Stillness and darkness brooded over the waters and over the shores. Suddenly there was presented

to our sleepy eyes a dazzling sight. Away up in the heavens the star-spangled banner appeared, lustrous as a heavenly vision; its folds, waving gently in a soft night air, seemed to shine by inherent light, and to move by inherent life. The flag was "transfigured before us," and seemed to have been flung out of the skies, rather than lifted from the earth. It was not a supernatural effect. A great search-light turned upon the flag as it hung from a high staff wrought all this surpassing beauty.

A greater reverence for law is a sore need in this land of ours. Perhaps a better knowledge of what the laws are, how they are made, and how their defects may be remedied in an orderly way, will strengthen the conviction that they must be observed by every one. Government implies a body of rules, called laws or ordinances, proceeding from a source, whether king, or parliament, or congress, or legislature, or city council, having authority to frame and declare them. The authority to frame and declare implies a power to enforce—to compel obedience and to inflict penalties upon the persons or estates of the disobedient. In free representative governments, such as ours, the people, either directly or indirectly, at popular elections, choose the persons who make the laws, whether of the United States, of the States, or of the cities and

towns. But the obligation to yield reverence and obedience to the laws is not diminished, but greatly strengthened, by the consideration that they proceed from the people. Laws for the government of society can have no higher origin than the consent of those who are to be governed by them. Who, unless it be an exiled king, can question the legitimacy, the authority, of a government "of the people, by the people, and for the people?" In these words of Mr. Lincoln we have a terse and comprehensive description of the ideal American civil system. They might be used as a spirit-level or a plummet to test the courses we are placing upon the old foundations.

A government that proceeds from the people, is administered by them, and has for its high and only end the general welfare, ought to be able to command the respect, the allegiance, and the obedience of its citizens. But obligations, whether of a contractual, civil, or moral sort, only influence the conduct of men through their consciences or through their fears. We have not too much help when both of these conservators of social order are in strong exercise—and both should be cultivated and used. But our dependence is, and must always be, chiefly upon the educated consciences of the people. A cultivation of a love for the flag, of which I have spoken, and of a law-reverencing con-

science, should be begun in childhood. This must be largely the work of parents and teachers, for they have the care and instruction of the young. My plea is to them, that they will stir the young hearts in their homes and schools to love the flag and the things it stands for, and teach them to have a scrupulous regard for the law as a rule of action for the citizen. They will readily understand that they should keep the law, "Thou shalt not kill," whether it is read from the Decalogue or the criminal code. But those laws that have, or seem to have, no moral quality in them—that forbid the doing of things not bad in themselves—may they not be slighted or evaded if the observance of them is inconvenient or against our interest, and the penalty not too threatening? Many laws are made necessary because we have neighbors—because there are so many people. If there were not so many people using the park we might repeal the law that forbids the plucking of flowers and substitute the milder rule that Senator Hoar has set up on his grounds, "Don't pull up the roots." The flowers are planted in public grounds and at the public expense, and in a sense they belong to the people; but since there are not enough for all to pull, and as there cannot be an equal and the largest enjoyment of them in that way, the pulling of them is forbidden. All can have frequent and

equal enjoyment of the flowers if the appropriation of them is by the eye, and hands are kept off. A very little child can understand this object lesson, and when it has once been received it will restrain the feet from crossing many a forbidden border. If all laws, great and small, are not to be observed by every citizen, but each is to make an elective code for himself, it is the end of civil order. If you may choose, I may, and each of us has disabled himself as a citizen. The man who participates in or apologizes for the blowing up of a saloon ought to be held particeps in the retaliatory crime—the blowing up of the church. We are having a Renaissance of patriotism, and need a Renaissance of conscience toward the law. The man or woman who hides property from the customs officer or the tax-gatherer, or slips a fee into his hand to obtain a preference he ought not to give, cannot take the lead in a "tiger hunt." No executive officer should be criticised for enforcing the law. We cannot allow him any choice; if we do, he becomes a law-maker. The legislators, under our system, make the laws; and if they are unwise in the opinion of a majority of the people they can be changed. But till then obey them, as you love your country and her peace.

A lynching is a usurpation—a dethronement of our constitutional king—the law—and the crown-

ing of a cruel and unbridled tyrant. Neither excuses nor extenuation should be allowed, in a state where the courts are in the orderly exercise of their powers, and the judges are subject to impeachment. The persons who are the victims of mob violence are mostly not the rich and the influential, but the ignorant and the friendless—those of whom an undue influence with courts and juries cannot be predicated; and the imputed crimes are mostly of a nature to exclude the sympathy of the trial officers. The feet of justice may well be quickened without any loss of dignity or certainty; but the inquest, the open trial, the judicial sentence and execution, are the constitutional rights of every man accused of crime; and every citizen is under the highest obligation to make the case his own when they are denied to any other citizen. A lynching brutalizes those who take part in it, and demoralizes those who consent to or excuse the act. Crime is not repressed, but stimulated. The evidence has not been taken; and to his friends the man is a victim whose blood calls for revenge. As a nation we are inexpressibly shamed by these lynchings, and a broad movement on national lines to educate public sentiment, and to enliven the slumbering consciences of our citizens, is desirable and timely. There should be a medal of honor for the sheriff or jailer who, at the risk of his life,

and in the face of an inflamed community, defends his prisoner against the mob. The man who loathes the guilty and cowering wretch in his custody, and yet dies to defend him from a mob because the law makes it his duty to keep him and to present him before the lawful tribunal, is worthy of a monument. I can think of no higher test of the loyalty of a soul to duty.

All this has been said to impress upon my readers the fact that we live under a government of law, and that our oath of fealty includes all the laws—the small as well as the great—the inconvenient as well as the convenient. We should regard the law with more of the awe and reverence given in old times to the king. If we have not consented unto each particular law that it is good, we have given to legislators chosen by us power, within certain limitations, to make laws, and have solemnly obligated ourselves to obey such laws for the time being, or until other legislators, better informed as to public sentiment or more responsive to it, shall repeal or modify them. This compact is the basis of our civil system, and the only guarantee of social order, and it follows that the scrupulous observance of it is the test of good citizenship. He who breaks one law is guilty of all, for the covenant is not divisible. It is a false and mischievous opinion that any law can be

voluntarily broken without guilt. I do not stop to consider real cases of conscience, such as arose under the Fugitive Slave Law, nor the ultimate right of a people to overturn a government that has ceased to subserve the true ends of government; for our danger does not lie in the direction of the highly conscientious. The chief promoters of lawlessness are greed, corporate and individual, in its various manifestations, and the parasite of greed—anarchism. These corrupting and destructive forces assume in their campaigns the indifference of the body of the people. The forces of good order have no outposts; the whole army is generally on furlough. Signal fires and minute guns, and runners carrying the torch from village to village, as in the old days of Scotland, are needed to summon the forces.

We have not realized in government, any more than in mechanics, inherent and perpetual motion. It is not enough to construct and to start. Watchfulness, administration, and love are needed to keep the best-planned government on its projected lines. Men, rather more than machines, need watching. Not only in civil affairs, but in business, especially in corporate affairs, the idea of the delegation of power and responsibility has been carried too far. The citizens or the stockholders choose officers and then go about other business—

devolving upon these officers all responsibility for good administration. That is not the true idea of the relation of a citizen to public officers. He should put himself and all his personal influence behind the faithful public officer, and confront as an accuser and prosecutor the unfaithful. This is not an agreeable duty, but it is as much a part of the covenant of citizenship that we will lend our aid in making others obey the law as that we will keep the law ourselves. Our Government is a "law and order league" in perpetuity, and the members have something more to do than to elect officers and appoint committees. Public abuses are the direct and necessary result of public indifference. The plunderers step over sleeping sentinels and take by stealth the citadels they could never carry by assault. The law and order forces, on the other hand, are without strategy; the assault in force is their only war resource. Small evils grow to be large because there is no one to take a walking-stick and kill them. Reformers affect broadswords and columbiads. A walking-stick reformer may invoke ridicule, but enough of them will put the columbiads and broadswords out of use.

We need general assemblies of the people in the smaller civil subdivisions, town meetings in which two questions only shall be considered: First, are

the public officers faithfully and honestly transacting the public business? Second, are the laws—not this law or that, but all laws—enforced and obeyed? The enforcement of the law, whether we opposed or aided the making of it; the strict accountability of public officers, whether we opposed or aided their election, should be the objects and the limits of these meetings. There should be no distinction of persons. Our law and order movements are too apt to be confined to what we, not too accurately, call "influential" people. Every man and woman ought to have a chance to choose his or her side, without regard to station, or wealth, or race, or color. There will be none too many. In some such movements it has seemed to me that many have been assigned to the wrong side who would have chosen the right. There is danger that such may accept the place they would not have chosen. Can any working plan be devised to maintain from day to day an effective, watchful interest among the body of our citizens in the enforcement of the laws, and in a clean, honest administration of public affairs—small and great? Or, are we to accept the humiliating conclusion that bad things cannot be made good, or even better, until they come to be persistently and utterly bad; or, still worse, that when the river of popular indignation has cleaned the stable, it is

only to leave us without a supply of water for daily sanitation?

With an ardent love for our country, with a profound reverence for the law, and with a new resolve to be watchful, helpful citizens, we are now ready for some familiar talks about "This Country of Ours."

THIS COUNTRY OF OURS

CHAPTER I

THE CONSTITUTION

MANNER OF ITS ADOPTION—DEALS WITH LARGE AND PERMANENT THINGS—THREE GREAT DEPARTMENTS—A GOVERNMENT OF SPECIFIED POWERS, BUT SUPREME IN THOSE—NOT A CONFEDERATION—DIVISION OF POWERS BETWEEN THE NATION AND THE STATES.

THE Constitution of the United States was framed by a convention that assembled in Philadelphia on May 14, 1787, and finished its work September 17th of the same year. The Seventh Article is as follows: "The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same." On and prior to June 21, 1788, the conventions of the following States, and in the order named, ratified the Constitution: Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts, Maryland, South Carolina, and New Hampshire. The other States ratified as follows: Virginia, June 26, 1788; New York, July

The States ratify.

26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790. Government under the Constitution was instituted by the inauguration of George Washington as President, at New York, April 30, 1789. Congress had assembled on March 4th, but a quorum of both Houses was not present until April 6th.

The word "Constitution," as used among us, implies a written instrument; but in England it is used to describe a governmental system or organization made up of charters—as the Magna Charta -the general Acts of Parliament, and a body of long-established legal usages or customs. These are not compiled in any single instrument, as with us, but are to be sought in many places.

Meaning of "Constitution."

The common American usage, in making a State Constitution, is to elect, by a popular vote, delegates to a convention, whose duty it is to prepare a plan of government. When the delegates have agreed, and have properly certified the instrument, it is submitted to a direct vote of the people, and each voter casts a ballot "For the Constitution" or "Against the Constitution." If a majority vote for the Constitution it then becomes the paramount law of the State. The Legislature does not make the Constitution; the Constitution makes the Legislature; though

How made.

the convention is assembled under an act of the Legislature. The American idea is that constitutions proceed from the people, in the exercise of their natural right of self-government, and can only be amended or superseded by the people. Whatever one Legislature or Congress enacts the next one may repeal, but neither can repeal or infringe a Constitutional provision.

The delegates to the convention that framed the Constitution of the United States were not, however, chosen by a popular vote in the States, but by the Legislatures. Nor was the question of the adoption of the Constitution submitted in the States to a direct popular vote. The Seventh Article, already quoted, provided for a ratification by "conventions" of the States, but in the choice of the delegates to these conventions there was an opportunity for an indirect expression of the will of the people as to adoption or rejection. Article Five makes this provision for amendments: "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified

Adopted by Conventions in States.

by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress." So that amendments are to be submitted to the Legislatures of the States or to conventions, as Congress may decide. The power of amendment cannot be used to deprive any State of its equal suffrage in the Senate, without its consent.

Amendments adopted by State Legislatures.

Fifteen amendments to the Constitution have been adopted. Ten of these were proposed to the Legislatures of the States by the First Congress, and ratified. The other five amendments have, in like manner, been submitted by Congress to the State Legislatures for ratification—conventions in the States not having been used in any case. It will be noticed, also, that the vote upon the adoption of the Constitution, and upon amendments thereto, is by States—each State, without regard to its population, having one vote. But while these provisions make the popular control less direct than is usual in the States, and necessarily recognize the States in the process of making and amending the Constitution, the idea that Constitutions proceed from the people is not lost.

A Constitution should, and usually does, deal only with large and permanent matters. It leaves

details and transitory matters to the Legislature. It is an outline or frame. It establishes and defines the powers of the Legislative, Executive, and Judicial Departments, reserves certain great natural rights of the citizen; declares what principal officers shall be elected; prescribes their duties; provides for a succession in case of a vacancy, and for the removal from office of officers guilty of crime or the abuse of their powers. It is the supreme law of the land. The powers given by the Constitution to the National Government are, fortunately, couched in general and comprehensive terms. For if there had been an attempt to particularize, the instrument would not have adapted itself to the expansion of the country, and to the new phases which invention has given to commerce. If the framers of the instrument had been required to express themselves upon the question whether the National Government should be given the power to regulate the method of coupling the wagons that were then the vehicles of the limited inland commerce between the States, or to arrest and punish any citizen who obstructed their passage, the vote would probably have been in the negative. But the railroads have demonstrated the reasonableness, and even necessity, of such national regulations.

Deals only with large matters.

The general plan of our Constitutions, National and State, is a division of Government into three branches: the Legislative, the Executive, and the Judicial. The lines of this division of powers are not strictly observed in the National Constitution, for the President has something to do with legislation, and the Senate with executive appointments. But in a broad way it may be said that there are three co-ordinate and independent departments in our Government—the powers of each being classified and defined, and neither having the power to invade or subordinate the functions of the others. It is important here to note a difference between the powers of the National and of the State Governments. The original thirteen States were organized as States, and had each adopted a State Constitution before the Constitution of the United States was framed or adopted, save that in Connecticut the Charter of 1662 was continued in force as the organic law of the State until 1818, and in Rhode Island the Charter of 1663 was, in like manner, continued in force until 1842. All the powers of government, save such as had, by a compact between the States called "Articles of Confederation and Perpetual Union," been given to the Continental Congress, belonged to the States. The powers given to the Congress by the Articles of

Three great departments.

Articles of Confederation.

Confederation were vague and illusory. They were practically *nil.* For, where a power was given, the means necessary to its exercise were withheld. There was no effective union of the States, and nothing that could be called a National Government until the Constitution was adopted in 1789. Before that we had a Congress consisting of a single body of delegates. All votes were taken by States—a majority of the delegates from the State casting the vote of the State. There was no Senate, no separate Executive Department, and practically no Judiciary. The Congress, either by the whole body or by committees, performed the necessary executive functions: commissioned officers; raised and disbursed revenue; conducted our diplomacy; audited accounts, and exercised certain judicial functions. It was a weak attempt to organize a Government, but it answered so long as the common peril of British subjugation lasted. When that threat was withdrawn by the peace of 1783 the selfishness and jealousies of the States became intense and threatened to snap the feeble bonds that held them in union. The Congress became the laughing-stock of the country, and the best men shunned it. It had contracted debts in the prosecution of the war; and, the States neglecting or refusing to pay their quotas, Congress was protested and dishonored, for it had no power

to lay and collect taxes. It had made commercial treaties with foreign Powers, and the States refused to allow in their ports the privileges guaranteed by the treaties. Congress was a mimic show, the butt of jealousy and ridicule. Great things were demanded of men who could do nothing.

State jealousies and conflicts.

Each State made its own tariff law. If one, with a view to raising money to pay its pressing debts, fixed a high rate on foreign goods imported, another would adopt a lower rate to attract commerce to its ports. It was hence impossible for the States to make a beneficial use of the power to levy duties on foreign goods. And besides, commerce between the States was hindered and bad blood engendered by duties levied by one State on goods coming from another. New York laid a duty on firewood coming down the Sound from Connecticut, and upon garden truck crossing the river from New Jersey. Out of these and many like things grew the conviction in the minds of our statesmen and people that "a more perfect union" was necessary; that we must have a National Government, to which should be entrusted all those general powers affecting especially our relations with foreign countries, and the relations of the States with each other, and including such as were necessary to the general defence and welfare. It is not possible here to go into the details of the in-

tensely interesting events and discussions that led the people of the States reluctantly to surrender to the general Government adequate national powers. Some of our statesmen of that time were wise and unselfish, having a dim view of the glory to be revealed; but petty State jealousies, and the childish fear that the Union would oppress the States, well-nigh thwarted its formation. The proposed general government seemed to be regarded as if it were to be foreign in its control and purposes, and the powers asked for it as involving a surrender of the liberties of the people. So that, practically, when the Constitution of the United States was under consideration the question was, What powers will the people of the States consent to withdraw from the States and give to the National Government? The answer was expressed in the Constitution.

All this has been said with a view to illustrate the fact that the National Government is one of specified or particular powers. Congress may not legislate upon all subjects, but only upon those subjects submitted to its control by the Constitution. The United States Courts cannot entertain all suits, but only such as involve particular subjects, or such as are between particular persons, as these are specified in the Constitution. The language of the First Article of the Constitution is, "All legislative powers *herein*

A government of specified powers.

granted shall be vested in a Congress," etc. The States, on the other hand, have full legislative and judicial powers over all subjects, except such as have been committed by the Constitution of the United States to the National Government or prohibited by that Constitution to the States. But the exercise of these powers by the State Courts and Legislatures is in many particulars further restrained by the State Constitutions, so that there are some things that neither the United States nor a State can do—things reserved to the people, things they do not want done. In other words, the United States may do what it is authorized by the Constitution to do, while a State may exercise all appropriate acts of government except such as belong to the Nation or are reserved by the Constitution of the United States, or of the State, to the people.

British Constitution.

No question can ever be made as to the constitutionality of an Act of the British Parliament, for that body is invested with general and supreme legislative power. Mr. Bryce says:

> In England and many other modern states there is no difference in authority between one statute and another. All are made by the Legislature; all can be changed by the Legislature. What are called in England Constitutional statutes, such as Magna Charta, the Bill of Rights, the Act of Settlement, the Acts of Union with Scotland

and Ireland, are merely ordinary laws, which could be repealed by Parliament at any moment in exactly the same way as it can repeal a highway act or lower the duty on tobacco. . . . Here therefore we observe two capital differences between England and the United States. The former has left the outlines as well as the details of her system of government to be gathered from a multitude of statutes and cases. The latter has drawn them out in one comprehensive fundamental enactment. The former has placed these so-called Constitutional laws at the mercy of her Legislature, which can abolish when it pleases any institution of the country, the Crown, the House of Lords, the Established Church, the House of Commons, Parliament itself. The latter has placed her Constitution altogether out of the reach of Congress, providing a method of amendment whose difficulty is shown by the fact that it has been very sparingly used.[1]

Under our system every Act of Congress or of a State Legislature is subject to be nullified if the courts adjudge it to be in conflict, in the case of a State law, with the Constitution of the State or of the United States, and in the case of an Act of Congress, with the National Constitution.

The Constitution of the United States, and the public treaties and Acts of Congress within the Constitutional limits, are superior to and dominate all State Constitutions and laws. It is enough to

[1] The American Commonwealth, vol. i., pp. 237, 238.

say here, in a general way, that the powers of the National Government embrace all those things necessary or incident to the dignity and safety of the Nation; all matters affecting our relations, whether of a commercial or a diplomatic character, with other nations; all matters relating to commerce between the States and to controversies between States; the public defence; the public lands; the Indian tribes; naturalization of foreigners; the postal service; the granting of copyrights and patents; the coining of money; the fixing of a standard of weights and measures, and the power to levy and collect taxes in specified ways for public uses.

The Supreme Law — its scope.

It will be seen that a long list of powers is reserved by the States. In a general way this list embraces all those matters that relate to local control and government. The local control of local affairs is as essential as the national control of national affairs. The Tenth Amendment to the Constitution is as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." What the powers "delegated to the United States" are has been stated in a general way. The powers "prohibited by it to the States" are that no State shall enter into any

Powers reserved to the States.

treaty, alliance, or confederation, or grant letters of marque and reprisal, or coin money, or issue bills of credit, or "make anything but gold and silver coin a tender in payment of debts," or pass any bill of attainder, or ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility, or, without the consent of Congress, lay any impost on imports or exports, except it be necessary in the execution of its inspection laws, or any tonnage duty, or keep troops or ships of war in time of peace, or enter into any agreement or compact with another State or with a foreign power, or engage in war unless invaded or in imminent danger of invasion, nor can any State institute slavery, or abridge the privileges or immunities of citizens of the United States, or deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws, or assume or pay any debt incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of slaves, or abridge the right to vote on account of race, color, or previous condition of servitude.

The next thing that it is important to notice is that our Government is not a confederation of States, but as strictly a government of the people as is any state government. The Articles of Con-

federation were declared to be "Articles of Confederation and Perpetual Union between the States of New Hampshire, etc." — naming each of the States. But the preamble of the Constitution is: "We *the people of the United States*, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." It is true that the vote upon the adoption of the Constitution was, and the vote upon amendments is, by States, in State conventions or in State Legislatures; and that in various other ways the States are recognized and used in the administration of the National Government. It could hardly have been otherwise. But the construction of Mr. Calhoun and of the Secessionists that our Constitution is a mere compact between independent States; that any State may withdraw from the Union for any breach of the conditions of the compact, and that each State is to judge for itself whether the compact has been broken, has no support either in the history of the adoption of the Constitution or in the text of the instrument itself.

Not a confederation.

In the plan of government proposed to the Con-

vention by Mr. Randolph, of Virginia, the Congress was to have power "to call forth the force of the Union against any member of the Union failing to fulfil its duty under the articles thereof."[1]

Laws lay hold of the citizen.

The Constitution and laws of the United States take hold of and deal with each individual, not as a citizen of this or that State, but as a citizen of the United States. Each of us owes allegiance to the United States—to obey and support its Constitution and laws; and no act nor ordinance of any State can absolve us or make it lawful for us to disobey the laws or resist the authority of the United States. We owe another allegiance, each to his own State, to support and obey its Constitution and laws, provided these do not conflict with the Constitution and laws of the United States. In the Sixth Article of the Constitution of the United States it is written: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." There can be, in

[1] Elliot's Debates, vol. v., p. 128.

a proper Constitutional sense, no secession and no war between a State and the United States; for no State ordinance repudiating the national authority, or organizing resistance to it, can have any legal sanction.

This general sketch of the powers of the National Government will be followed by an examination of the provisions relating to each of its general subdivisions, and by a study of their practical operations.

CHAPTER II

THE CONGRESS

UNDER THE CONFEDERATION, ONE HOUSE—TWO UNDER THE CONSTITUTION — APPORTIONMENT OF REPRESENTATION — QUALIFICATIONS AND PAY OF SENATORS AND REPRESENTATIVES — THEIR TERMS—POWER OF CONGRESS OVER TIMES AND MANNER OF CHOOSING—TIMES OF MEETING OF CONGRESS—CLASSIFICATION OF SENATORS—SECRET SESSIONS.

THE Congress under the Articles of Confederation consisted of a single body. This system was contrary to all the experience of the colonists. The Parliament of the mother country consisted of two Houses, and the colonial governments very soon and very generally adopted the bicameral system. Mr. Curtis says: "So fully was the conviction of the practical convenience and utility of two chambers established in the Anglican mind that, when representative government came to be established in the British North American Colonies, although the original reason for the division ceased to be applicable, it was retained for its incidental advantages."[1]

Congress of Confederation a single body.

There were no lords and commoners in Amer-

[1] Curtis's Constitutional History of the United States, p. 396.

ica to suggest legislative houses in which each should be separately represented, but the Governor and Council stood in a more or less strict sense for the King, and the need of the counterbalance of a popular assembly was felt in the Colonies. The use of the system became a habit of government. When the States came to frame their first Constitutions, all of them, except Pennsylvania and Georgia, provided a Legislature composed of two Houses. But the use of two Houses presupposes that for the added House there shall be a different method of selection, or a different tenure of office, or both. It was not easy to provide a second House for the Confederation—for the States were not yet ready to admit the idea of a representation based on population. The representation must be by States, and the votes by States—the smallest State having the same weight as the largest in determining every question. The delegates were mere State agents, subject to recall at any time, and a second chamber composed in the same way would only have been an encumbrance. And further, the Articles of Confederation provided for no separate Executive Department, but committed all executive duties to Congress, and for the exercise of executive powers a single body was better than two. When the Constitution came to be framed,

First State Legislatures nearly all bicameral.

and concurrence had been reached upon the proposition that the Government was to be endowed with full national powers, there would have been practical unanimity for a Legislature of two Houses, but that the old demand that the representation be by States, in order to save the smaller States from the domination of the larger, stood in the way. The compromise finally hit upon made two Houses essential.

Two Houses of Congress—The Compromise.

A House of Representatives whose members were to be chosen upon the basis of population, for a term of two years, and a Senate to be composed of two members from each State, chosen by the Legislatures, for a term of six years, solved the apparently irreconcilable difference in the Convention. The contention for a vote by States, however, had to be abandoned. Rhode Island has as many Senators as New York, but the roll of the Senators, not of the States, is called on a vote. In the Congress of the Confederation if a majority of the representatives of a State voted "yea," the vote of the State was recorded in the affirmative—no account being taken of the minority who voted "nay." If the vote of the State was equally divided it was not counted. But in the Senate each Senator is called and his vote recorded, and it very often happens that one Senator from a State votes "yea" and the other "nay."

It is curious to note that the plan of government proposed by Mr. Randolph, of Virginia, in the Convention, provided for the election of the Senators by the House of Representatives out of a number of persons nominated by the State Legislatures.

The Constitution declares that the "Congress of the United States" shall "consist of a Senate and House of Representatives." The two bodies constitute the Congress. Popularly, only a member of the House of Representatives is spoken of as a "Congressman" or a "Member of Congress," but, in fact, those terms are just as truly descriptive of a Senator as of a member of the House—for a Senator is a member of Congress. The members of the House are elected directly by the people—the Senators indirectly. That is, in the election of a member of the House each voter in his proper district puts his own ballot into the ballot-box for the person he desires to have chosen; while in the choice of a Senator the vote is given for a member of the State Legislature, with more or less information as to whom the member, if elected, will support for Senator. The members of the House are chosen every two years, the Senators every six years. The total number of the members of the House is not fixed by the Constitution, but it is limited:

A Member of Congress.

Election and terms of Senators and Representatives.

"The number of Representatives shall not exceed one for every thirty thousand" of population—except that each State shall be entitled to at least one. A census of the population was required to be taken within three years after the adoption of the Constitution, and every ten years thereafter, and this census is made the basis of the apportionment of the Representatives among the States. But an agreement as to this fair rule of apportionment was not reached without difficulty, owing to the fact that some of the States had a large slave population. If only free persons were counted the influence of such States would be greatly reduced, and their delegates, therefore, insisted that the slaves should be enumerated. They were, by the laws of the States where they were held, property—chattels to be bought and sold—and there was no more reason why they should be counted than the mules and oxen they drove to the plough. But the States of the South, where the body of the slave population then was, were insistent, and it was finally agreed that in making the enumeration of the population there should be added "to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons." These "other persons" were the African

Apportionment of Representatives—The slave population.

slaves, and the provision meant that three out of every five slaves should be counted just as if they were free persons.

The Thirteenth, Fourteenth, and Fifteenth Amendments.

It is curious to note in all of the provisions of the Constitution intended to protect property in slaves, the careful avoidance of the use of the word "slave." It is not found in the instrument until we come to the Thirteenth Amendment, which abolishes slavery. The Fourteenth Amendment contains important limitations upon the old rule for the apportionment of members of the House of Representatives. It omits the phrase "all other persons"—for there were no longer "other persons"—and drops the word "free" because now all were free. It followed as one of the results of emancipation that two-fifths of the black population in the old slave States before uncounted were now to be counted, and the representation of those States in the House of Representatives was proportionately increased. But in some of these States, under the power to determine the qualifications of voters, the Legislatures had in one way or another deprived the freedman of the right to vote, and in others he was without law excluded from the ballot-box. He was counted in the apportionment, but not in the balloting. To remedy this miscarriage and injustice it was provided in

the Fourteenth Amendment that when the right to vote for Electors for President, Representatives in Congress, or State officers is denied to any of the male inhabitants of the State, of the age of twenty-one years, and citizens of the United States, except for crime, the basis of representation in such State shall be reduced in the proportion that such excluded persons bear to the whole number of male citizens twenty-one years of age. This provision relates to action by the State in denial of the right to vote, and does not cover the case of a denial resulting from the lawless acts of individuals. It has never been put into operation in the case of any State.

The Fifteenth Amendment provides that neither the United States, nor any State, shall deny or abridge the right of any citizen to vote "on account of race, color, or previous condition of servitude."

First House of Representatives.

The first House of Representatives was composed of sixty-five members. The Apportionment Act of February, 1891, fixes the total number of members at three hundred and fifty-six. The delegates from the Territories have no vote and are not included in the apportionment; and if to these are added the representative from the new State of Utah, the total number of members and delegates is now three hundred and

sixty. The first apportionment, made by the Constitution itself, upon estimates as to the population of the States, furnishes some interesting comparisons with the apportionment of 1891. Two States have fewer members now than they had in the first Congress—Connecticut then had five, now only four; New Hampshire then had three, now only two. Three States have now each precisely the same number of members they had in the first Congress—namely, Virginia, ten; Maryland, six, and Delaware, one. The representation of Virginia in the first Congress was larger than that of any other State—Pennsylvania and Massachusetts following with eight each, and New York and Maryland with six each. Now, New York has thirty-four, Pennsylvania thirty, and Maryland its original six members. It should be noted, however, that West Virginia has four members, who should be taken into the account as representing districts formerly a part of Virginia. The old thirteen States have now one hundred and thirty-seven members, and the new States two hundred and twenty.

Growth of new States.

Mr. Gerry, a member of the Constitutional Convention, foresaw that the seat of empire might take its way westward, and proposed "that, in order to secure the liberties of the States already confederated, the number of representatives in the

first branch (House of Representatives), of the States which shall hereafter be established, shall never exceed in number the representatives from such of the States as shall accede to this Confederation." He feared the new States would "oppress commerce, and drain our wealth into the western country." His amendment was lost by the close vote of four States to five, and this very narrow majority was probably secured by the confident prediction of Mr. Sherman that the new States would never outnumber the old.[1]

There were fears expressed in the Convention that the number of Representatives would be kept so low that the House would not be a safe and popular body, but experience has shown that the tendency is to unduly enlarge the membership rather than to unduly contract it. It has been said that every public assembly consisting of more than one hundred members is necessarily a mob, and there have been frequent occasions when the casual visitor to the gallery of the House of Representatives would have found in what he saw a verification of the saying. But these are exceptional incidents, and though the order maintained is often bad, and never quite good, the public business is transacted on the whole with credit and safety. The size of the House, however, re-

[1] Elliot's Debates, vol. 5, p. 310.

quires stringent rules — that speeches be brief and that the Speaker have a severe control of the proceedings. The previous question, or some form of clôture, to cut off debate and dilatory motions and bring the House to a prompt vote on the main question, is essential in so large a body, and, indeed, in any legislative body. The Senate rules do not provide any form of clôture, and debate there runs on with no limit.

Rules of House and Senate — clôture.

When filibustering and quorum-breaking appear in any legislative body, its effectiveness and usefulness can only be restored by the clôture and by noting the presence of non-voting members. So long as the dignity and self-respect of the Senators were effective to exclude these evil practices, the corrective rules could be dispensed with. But that day is a memory. The clôture may be made liberal, giving ample time for discussion and ample opportunity for amendment — the essential thing is that a vote may at some reasonable time be secured.

The qualifications of a member of the House are that he shall have been seven years a citizen of the United States, shall be twenty-five years of age, and an inhabitant of the State in which he is chosen. A Senator must have been for nine years a citizen of the United States,

Qualifications of Representatives and Senators.

be thirty years of age, and an inhabitant of the State for which he is chosen.

Section 3 of the Fourteenth Amendment to the Constitution provides that no person shall be a Senator or Representative in Congress who, having, as a member of Congress, or as a legislative, executive, or judicial officer of a State, taken an oath to support the Constitution of the United States, afterward engaged in insurrection or rebellion against the same or gave aid or comfort to the enemies thereof. "But Congress may, by a two-thirds vote of each House, remove such disability."

Electors of Representatives.

The Constitution provides for apportioning the members of the House to the States, but it does not prescribe the qualifications of the persons who may vote in the States for such members—further than to say that they "shall have the qualifications requisite for electors of the most numerous branch of the State Legislature," and by the Fifteenth Amendment, that the right to vote shall not be denied nor abridged on account of race, color, or previous condition of servitude. The States, of course, determine who shall be permitted to vote for members of the popular branches of the State Legislatures, and by the same act they determine who shall be permitted to vote for members of the National House of Representatives. If women are by the law of a State

permitted to vote for members of the popular branch of the State Legislature, they may also vote for Members of Congress.

The Constitution also gives to the States the power to prescribe "the times, places, and manner of holding elections for Senators and Representatives," but reserves to Congress the right to "make or alter such regulations, except as to the places of choosing Senators." The Congress may leave all these matters to the respective State Legislatures, or it may take them all into its own hands—except that as the election of Senators is to be by the Legislatures, the places of choosing them must be the ordinary places of meeting of the Legislatures—the State capitals. Congress has full power to regulate all other matters connected with the election of Senators and Representatives. It may declare that members of the House shall be elected "at large" in the States—that is, that the whole number assigned to a State shall be voted for by all the voters of the State; or it may divide the States into districts and provide for the election of one member for each district. It may provide separate ballot-boxes and National election officers and canvassing boards.

Times, places, and manner of choosing Senators and Representatives.

Power of Congress over election of.

But all of these powers have not been exercised by Congress and for the most part the States have

been allowed to regulate the manner of choosing Representatives. The United States has, however, taken some supervision of the election of the members of the National Congress. The law of 1866 provides that the Legislature chosen next before the expiration of the term of a Senator shall choose his successor, and that it shall proceed to do so on the second Tuesday after it assembles. On that day each House of the Legislature must vote separately, *viva voce*, for a Senator, and enter the result on its journal; the two Houses must at 12 M. the next day meet in joint session, and if it appears that the same person has received a majority of the votes in each House he is declared to be elected; if there has been no election the joint assembly must take a vote, and if anyone receives a majority of the votes—a majority of all the members elected to both Houses being present and voting—he is to be declared elected. If there is still no election the joint assembly proceeds with the balloting, and must meet every day at 12 M., and take at least one ballot each day until a Senator is elected. The Governor of the State is required to certify the election, under the seal of the State, to the President of the Senate, the certificate to be countersigned by the Secretary of State of the State.

Election of Senators.

As to the election of members of the House of

Representatives Congress has fixed the time—the Tuesday after the first Monday in November in each second year; has enacted that the members shall be elected from single districts—that is, one member from a district; that these districts shall be composed of contiguous territory and contain as nearly as practicable an equal number of inhabitants; that when an additional member is given to a State he shall be elected from the State at large until the Legislature redistricts the State; and that all votes shall be by written or printed ballots. Article 26 of the Revised Statutes, made up of Acts passed by Congress from 1865 to 1872, contains elaborate provisions for regulating the election of Representatives in Congress. Provision was made for supervising such elections by supervisors to be appointed by the United States Courts, and for securing a free ballot and the peace at the polls by the presence of special deputy marshals. A number of crimes against the ballot were defined and penalties allotted. These provisions were repealed in 1894. It would not be appropriate here to discuss the wisdom of such laws. Generally they were clearly within the Constitutional powers of Congress, and the question is, therefore, one of expediency. If the States provide equal and fair election laws, and these are fairly and firmly enforced, so that each

Election of Representatives.

legal voter can deposit his ballot freely and have it counted honestly, there is no call for the enactment of Federal election laws. But it should not be forgotten that members of the House of Representatives and Senators are National, not State, officers, and that the States have no inherent or exclusive right to regulate the election of such officers. Election offences committed at an election for members of the National House are National offences—they injure the people of all the States. It is greatly to be hoped, and much to be preferred, that the States will so vigorously and so righteously regulate these elections that there may be no need for the United States to resume its Constitutional powers. But, as Mr. Story says, "Nothing can be more evident than that an exclusive power in the State Legislatures to regulate elections for the National Government would leave the existence of the Union entirely at their mercy."[1]

State Election Laws.

The use of what is called the "Gerrymander" in order to obtain an undue party advantage in the election of members of the House of Representatives has become a public reproach. It is the making of unfair Congressional districts, not having relation primarily to population and to the geographical relations of the

"The Gerrymander."

[1] Story on the Constitution, vol. i., Sec. 817.

counties composing them, as they should, but to party majorities in the counties, with the object of giving to the party making the apportionment an undue advantage. The districts are made up to be Republican or Democratic, as the case may be, and the voters of the minority party in the State are cheated out of a fair representation in the Congressional delegation. This is a grave evil, but it may be doubted whether it would be cured, or even much ameliorated, in the long run, if Congress were to take into its hands the making of the Congressional districts.

In the first Virginia Act for the election of Members of Congress, a division of the districts was brought about by Patrick Henry for the purpose of securing a party advantage.

Mr. Bancroft says: "He divided the State into districts, cunningly restricting each of them to its own inhabitants in the choice of its representative, and taking care to compose the district in which Madison would be a candidate out of counties which were thought to be unfriendly to federalism. Assured by these iniquitous preparations Monroe, without scruple, took the field against Madison."[1] Happily this very early instance of the "Gerrymander" failed of its purpose. Mr. Madison entered the canvass, and, going before the people,

[1] Bancroft's History of the Constitution, vol. ii., pp. 354–55.

defeated the design to exclude him from the first Congress.

When a vacancy happens in the delegation from a State in the House of Representatives by death or otherwise, it must be filled by a new election, which it is made the duty of the Governor to call, but if a vacancy happens in the Senate "during the recess of the Legislature" the Governor of the State may appoint a Senator to hold until the next meeting of the Legislature, when the vacancy must be filled by an election. It has been, and perhaps still is, an unsettled question whether in case a State Legislature fails to perform its duty to choose a Senator, the Governor of the State can fill the vacancy thus caused by appointment. The question is one to be decided by the Senate under its power to judge of the election and qualifications of its members, and perhaps pure legal considerations have not always controlled the action taken. It would seem, however, that this provision for the appointment of Senators was intended to provide for the cases where the Legislatures could not act, and not for the cases of a refusal or failure to act. Several cases involving this question are now (1897) before the Senate.

Vacancies in Senate and House.

It is the plan of the Constitution that one-third of the Senators shall be chosen every two years,

and in order to effect this it is provided that immediately after the first meeting of the Senate the Senators shall be divided into three classes—the first class to retire at the expiration of two years, the second at the expiration of four years and the third at the expiration of six years—the full term. At the first session of Congress this provision was put into effect by this method: Three lists of the names of the Senators were written on papers. One contained the names of six senators, one of seven and the other of six. The names of both the Senators from a State were not in any case placed upon the same list. Three papers of equal size were then placed in a box, and three persons were selected to draw them out. The lot determined the terms for which the Senators on the several lists should serve—one list for two years, one for four years and one for six years. When the successors of the Senators in each of these three classes were elected they were elected to serve a full term, and thereafter one-third of the Senators by the expiration of full terms vacated their seats every two years. In the case of a vacancy by death or resignation the election is not for a full term, but for the unexpired term.

Senate divided into three classes.

As each new State is admitted and becomes entitled to representation in the Senate its Senators

are so assigned as to preserve the classification, the assignments being determined between them by lot drawn in the presence of the Senate. There are now ninety Senators when the Senate is full — three classes of thirty each. The Senators from Utah—the last State admitted to the Union (1896)—fell into the two and four year classes, and so serve only for those periods, instead of full terms of six years. Of this provision Story says: "Here, then, is a clause which, without impairing the efficiency of the Senate for the discharge of its high functions, gradually changes its members and introduces a biennial appeal to the States which must forever prohibit any permanent combination for sinister purposes. No person would probably propose a less duration of office for the Senate than double the period of the House. In effect, this provision changes the composition of two-thirds of that body within that period."[1]

Senators from new States classified.

The Constitution requires Congress to meet every year, and fixes the first Monday in December as the day of meeting, "unless they shall by law appoint a different day." There have been thirty-one sessions of Congress commencing on days other than that named in the Constitution. Thirteen of these (including the First

Meetings and adjournments of Congress.

[1] Story on the Constitution, vol. i., Sec. 724.

Session of the 55th Congress) have been special sessions assembled by proclamation of the President on a day fixed by him, and in the other cases a special day of meeting was fixed by law. If Congress is assembled before the day named in the Constitution, and does not adjourn sooner, the coming of that day does not interrupt the session. The times of meeting and adjournment may be determined by Congress for itself, subject to these restrictions: It must adjourn without day, when the two years' term of the members of the House expires; neither House can, during a session, adjourn for more than three days without the consent of the other, nor to any other place than that in which the two Houses are sitting; and in case of disagreement between the two Houses as to the time of adjournment, the President may adjourn them to such time as he shall think proper.

Place of meeting.

The Constitution does not fix the place of meeting of Congress. It is fixed by law. The only reference in the Constitution to a permanent seat of Government is found in the clause giving to Congress the exclusive power of legislation "over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United

States." The first Congress assembled in New York in pursuance of a resolution of the last Congress of the Confederation. The permanent seat of Government, as established by the act of 1790, is not the City of Washington, in the restricted sense, but "all that part of the territory of the United States included within the present limits of the District of Columbia." [1]

When the prevalence of a contagious disease or other circumstances would make a meeting of Congress at the seat of Government dangerous to the health or lives of the members, the law authorizes the President to assemble Congress at some other place.[2]

The dates for the election of Senators and Representatives are not fixed by the Constitution—that subject, as we have seen, being regulated by a law of Congress—nor does it declare when the terms of six and two years respectively, of the Senators and Representatives, shall begin. The first Congress was appointed to assemble on the first Wednesday in March, 1789, which happened to be the 4th day of the month, and that date, in every second year, has ever since been recognized as the day when the old Congress expires and the new one begins. The Act of 1872 recognizes the usage by providing for the election of

Why terms of Representatives begin March 4th.

[1] Revised Statutes, Sec. 1795. [2] Ibid., Sec. 34.

Representatives "to the Congress commencing on the 4th day of March next thereafter."

Congress must adjourn *sine die* on the 3d of March in each second year, but the session of the 3d is usually prolonged until twelve o'clock meridian of the 4th. On the 3d of March, 1851, at twelve o'clock midnight, Mr. Mason, a Senator from Virginia, whose term expired on that day and whose credentials for another term were on file, asked to have the oath administered to him, upon the ground that his right to sit under his old credentials expired at that hour. The Senate refused to allow his request, and, by resolution, declared that the session did not expire until twelve o'clock meridian on the 4th. The new Congress does not assemble and organize until the first Monday of the following December, unless the President calls it to meet at an earlier date in special session.

It is March 3d until noon of March 4th.

The terms of the Senators begin at the same time as those of the members of the House—March 4. The term of office of the President is also fixed by law to begin on March 4, so that he always begins his administration with a new House of Representatives—chosen at the same time that the Presidential electors were chosen.

The Senate at the expiration of every Presidential term is called, by a proclamation of the out-

going President, to meet in special session immediately after the adjournment of Congress, so that the members of the new Cabinet and other important appointments made by the incoming President may be promptly confirmed.

As to the pay of Senators and members of the House the Constitution only declares that they shall receive a compensation for their services, to be ascertained by law and to be paid out of the Treasury of the United States. Under the Articles of Confederation each State maintained its own delegates to the Congress, and in the Constitutional Convention there was a strong sentiment in favor of continuing that plan. A motion that Senators should be paid by their respective States was lost by the narrow vote of five States in the affirmative to six in the negative. The members of the British Parliament now receive no compensation for their services, but in earlier times they did—the per diem being paid by the shire or borough. With us the practice of paying a fixed compensation to members of legislative bodies has been well-nigh universal; but the rule has been to make the compensation so small as not to make the places attractive from a mere money point of view. The pay of Senators and members of the House of Representatives has been for many years $5,000 a year. In 1873 Congress passed a law increasing

Pay of Senators and Representatives.

the pay to $7,500 a year, and making the increase relate to the whole term of the members of that Congress, then just expiring—March 3, 1873. A great popular outcry was at once made, and those who had supported the law were denounced as "salary grabbers." The popular feeling was so strong that in the ensuing January Congress repealed the law, and restored the old salaries, saving only the increases which the act gave to Justices of the Supreme Court—from $8,500 to $10,500 for the Chief Justice, and from $8,000 to $10,000 for the Associate Justices, and to the President from $25,000 to $50,000. General Grant entered upon his second term the day after the passage of the new salary law, and, as the Constitution provides that the salary of the President shall "neither be increased nor diminished during the period for which he shall have been elected," Congress could not, as to him, restore the old salary. So the compensation of the justices of the Supreme Court cannot be "diminished during their continuance in office," and Congress was without power to restore the old salaries as to the Justices then in office. It is quite probable that if the members of the 42d Congress had not made the increase of salary retroactive, in order to participate in their own generosity, the advanced salaries would have been accepted by the country without protest.

The "Salary Grab."

Each Senator, Representative, and delegate receives mileage at the rate of twenty cents per mile, "estimated by the nearest route usually travelled in going to and returning from each regular session" of Congress.

Mileage.

All of the sessions of the Senate (legislative as well as executive) were held with closed doors until the second session of the 3d Congress—except during the discussion in the first session of that Congress of the contested election of Albert Gallatin as Senator from Pennsylvania. On February 20, 1794, the Senate resolved that after the end of that session the galleries should be opened during legislative sittings, unless otherwise ordered.

Senate at first held with closed doors.

The sessions of both Houses are now generally open, and large galleries give the public access to the legislative halls. The Constitution requires each House to keep a journal of its proceedings, and from time to time to publish the same, "excepting such parts as may in their judgment require secrecy." This, of course, implies that either House may transact business in secret session when the public interests require it. In the Senate the use of the secret session is frequent and familiar. The Senate rules provide that on a motion made and seconded to close the doors on the discussion of any matter the

Sessions now open.

doors shall be closed and remain closed during such discussion. So when Executive nominations or treaties are under consideration the galleries are cleared and the doors closed—only Senators, and certain necessary officers who are sworn to secrecy, being allowed in the chamber. There have been frequent attempts made to abolish the secret sessions of the Senate, but they have been ineffectual. These sessions are called "Executive sessions," because they are almost wholly devoted to Executive business—namely, the consideration of appointments to office and foreign treaties. It seems quite as necessary and appropriate that the consultations in the Senate as to appointments, and especially as to treaties, should be confidential as that the conferences between the President and his Cabinet, or between the President and others whom he may consult about the same matters, should be so.

Senate Executive Sessions.

The rule of the House, as to secret sessions, is:

"Whenever confidential communications are received from the President of the United States, or whenever the Speaker or any member shall inform the House that he has communications which he believes ought to be kept secret for the present, the House shall be cleared of all persons except the members and officers thereof, and so continue during the read-

House secret sessions.

ing of such communications, the debates and proceedings thereon, unless otherwise ordered by the House."

Each House is the judge of the election and qualification of its own members. A contest as to which of two persons was elected to a seat in the House of Representatives cannot be settled by the Courts, but only by a vote of the House. In the 54th Congress there were thirty-three seats contested in the House. The hearing of these cases is primarily by the Committee of Elections, and afterward by the House upon the report of the Committee. It has often happened that a contest was not decided until the very last days of a Congress, and that the sitting member, whose vote may have determined an important question, was then decided never to have been lawfully elected a member of the House.

Contested seats.

CHAPTER III

THE CONGRESS

ORGANIZATION OF EACH HOUSE—OFFICERS—RULES—COMMITTEES —QUORUM—INTRODUCTION AND PASSAGE OF BILLS—PETITIONS — REVENUE BILLS — APPROPRIATIONS — TAXING POWER — INTERNAL AND FOREIGN COMMERCE.

THE Constitution names the presiding officer of the House—"the House of Representatives shall choose their Speaker." He receives a salary of $8,000 a year, and his office is one of the first importance and dignity. He may, under the rules, appoint a Speaker *pro tempore* for one day, and, in case of illness, for ten days, with the consent of the House. Under the rules which generally govern the House, his influence in promoting or defeating the passage of bills before the House is very great. He appoints all of the committees, and in a body so large as the House of Representatives the fate of most measures is settled in committee. The Committee on Rules consists of three members, the Speaker being one, and this committee from time to time reports special orders for the consideration of particular measures, and for bring-

The Speaker.

Great power of — appoints committees.

ing them to a quick vote. It may often happen that a bill is in such a position on the calendar that it is impossible to bring it forward for passage under the standing rules of the House, and that its fate hangs upon the consent or refusal of the Committee on Rules to report a special order for its consideration.

The Speaker, being a member of the House, may vote upon all questions, but the rules do not require him to vote except when the vote is by ballot, or when his vote would be decisive of the question.

No member can speak until he has been recognized by the Speaker, and when two or more members rise at once, the Speaker names the member who is to speak. The question, "Which member was first up?" is never put to the House as it sometimes is in the English Parliament. As a result, members arrange with the Speaker in advance for recognition, and it is not thought to be impertinent for the Speaker to inquire what the member desires to call up. There is sometimes much fuming if the Speaker refuses to allow a bill to be called up, but this ancient and necessary rule abides; for, while each member would like to get up his own bill, he does not fail to see that utter confusion would result if any member could call up anything at any time. The

Recognition of members by.

rules are made by the House; the restraints are self-imposed; the Speaker is chosen and may be deposed. He must keep a majority with him. Leadership is essential, and liberty is saved by the reserved power to change leaders. In the British Parliament the Ministry exercises a strong leadership. The House of Commons can change leaders at its pleasure—but there are always leaders.

Speaking of the English system, Mr. Bagehot says:

English system.

"Change your leader if you will, take another if you will; but obey No. 1 while you serve No. 1, and obey No. 2 when you have gone over to No. 2. The penalty of not doing so is the penalty of impotence; it is not that you will not be able to do any good, but you will not be able to do anything at all. If everybody does what he thinks right, there will be six hundred and fifty-seven amendments to every motion, and none of them will be carried, or the motion either."[1]

The President of the Senate.

The Vice-President is by the Constitution made the "President of the Senate," and in his absence a President *pro tempore* is chosen from among the Senators. The contrast between the powers and influence of the

[1] Bagehot's Works, vol. 4, p. 165.

President of the Senate and those of the Speaker of the House is very great. The Senate appoints its own committees by resolution. A caucus committee of Senators of the majority party arranges an assignment of the Senators of that party on the standing committees, taking, of course, a majority of each committee and the chairmanship, and this is submitted to a party caucus for confirmation. A caucus of the minority party assigns the Senators of that party to their committee places, and when this has been done a resolution of the Senate establishes the committees. The Vice-President has no influence in directing the order of business, and no vote except when the Senate is equally divided; then he may give the casting vote. He is not heard in debate—as the Speaker may be.

The President of the Senate must recognize the Senator who first addresses him; he has no discretion, and any inquiry by him as to the purposes of the Senator would be indignantly resented. The constitutional presiding officer of the Senate, the Vice-President, is not chosen by the body, and may belong to the minority party in the Senate. In the nature of things he cannot be a leader, and the powers of a President *pro tempore*, who is chosen by the body, could not well be made larger than those of the permanent President. The ma-

jority of the Committee on Rules is of course of the majority party, but there is no previous question — no clôture of any kind — and so no way of securing the adoption of a special rule to bring a question to a vote. Any Senator can call up anything at almost any time and speak upon it, and a resolute minority can always thwart the purposes of the majority. This is not a satisfactory condition, and strongly tends to make the Senate unsatisfactory.

No clôture in Senate.

A majority of each House, under the Constitution, constitutes a quorum for the transaction of general business. But, when the House is engaged in electing a President of the United States, under Article XII. of the Constitution, a quorum consists of "a member or members from two-thirds of the States;" and, when the Senate, under the same article, is engaged in electing a Vice-President, a quorum consists of "two-thirds of the whole number of Senators." There has been much dispute whether a majority of the House was to be taken as meaning a majority of all the members who might under the law be elected, or only a majority of the actual members—taking no account of vacancies. The latter view has probably the stronger support in the Congressional precedents. When the House of Representatives is in Committee of the Whole

What makes a quorum.

one hundred members constitute a quorum. If a quorum is not present, and that fact is disclosed, business must stop until a quorum is secured. But the members present are empowered by the Constitution to adjourn from day to day and "to compel the attendance of absent members, in such manner, and under such penalties as each House may provide." A great deal of business is done in both the Senate and House when a quorum is not present, the absence of a quorum not having been officially disclosed by a count or a roll-call, and the point of "no quorum" not having been raised.

Now, in the House, members present are counted.

Until the 51st Congress a quorum of the House meant in practice a voting quorum, no account being taken of members present, but not voting. In that Congress, before rules had been adopted, and while the House was proceeding under general parliamentary law, a roll-call having failed to disclose the presence of a quorum, the Speaker (Mr. Reed) counted the members present but not voting, and decided that these with the voting members constituted a quorum. This just and reasonable practice was incorporated into the rules of the House; and while, in the 52d Congress, there was a return to the old rule, the 53d, 54th and 55th Congresses have adopted the rule of counting members pres-

ent, but not voting, to make a quorum, and that rule is now probably permanently a part of the House procedure. The Senate has not adopted this rule; and in that body voting Senators only are counted. The Supreme Court has, since the adoption of the practice by the House of counting members present but not voting, held that "when a majority are present the House is in a position to do business," and that a rule of the House providing for counting members present but not voting, and adding the number of such to the number of those voting to determine the presence of a quorum, is valid. It was also held that a quorum being present the act of a majority of the quorum is the act of the House.[1]

Not so in the Senate.

One-fifth of the members present, of either House, are empowered by the Constitution to demand a vote by yeas and nays, and the vote must be recorded in the journal which each House is required to keep of its proceedings. This journal does not include the debates, which are, however, published in full daily in the "Congressional Record."

Demand of yeas and nays.

The Senators and Representatives are privileged from arrest, except for treason, felony, or breach of the peace, while in attendance upon their respective

[1] United States *v.* Ballin, 144 U. S., 1.

Houses, and while going to and returning from the meetings of Congress. A member may be punished by the House to which he belongs for disorderly behavior, and by a two-thirds vote of the House may be expelled. In order to remove from Members of Congress the temptation to create offices for themselves the Constitution makes them ineligible during the term for which they were elected to appointment to any office which was created or the emoluments of which were increased during such term. Senators and Representatives are also ineligible to the office of Elector of President and Vice-President. And no person can, while holding an office under the United States, be a member of either House.

Organizing the Senate.

When a Senator is elected and receives his certificate of election from the Governor he usually causes it to be presented to the Senate by his colleague before his own term begins. The certificate is received and filed, if regular in form; but if objection is made to the certificate, or the election is in any way challenged, the questions arising are referred to the Committee of Privileges and Elections for examination. The Senate is always an organized body. Its presiding officer—the Vice-President—calls the Senate to order at the assembling of a new Congress, and the Secretary, Sergeant-at-Arms,

and other officers and clerks, who hold office during the pleasure of the Senate, resume their duties. If the Vice-President is not present when the Senate assembles, the Secretary of the Senate, or, in his absence, the Chief Clerk, performs the duties of the chair, pending the election of a President *pro tempore*. The President *pro tempore* is entitled to call any Senator to the chair, but such a designation cannot extend beyond an adjournment, unless unanimous consent is given. If the session is a regular one the presiding officer raps for order and announces that the Senate is in session pursuant to law. If the session is a called or special one the proclamation of the President convening the Congress, or the Senate, as the case may be, is read and entered upon the journal. The Senators-elect are escorted in groups of four (each usually by his own colleague) to the desk, and the oath of office is administered by the President of the Senate.

The rules of the Senate remain in force from one Congress to another, save as they may from time to time be modified. There is, however, a body of joint rules of the Senate and House of Representatives; and, as the concurrence of the House is necessary, these must be re-enacted at the beginning of every Congress.

In the House the process of organization is

quite different from that of the Senate. There are no hold-over members or officers, save that certain temporary duties are devolved by law upon the clerk of the next preceding House. The law provides that he shall make a roll of the Representatives-elect, placing thereon the names of those persons whose credentials show that they were regularly elected. The practice is that when the hour of assembling arrives the clerk of the preceding House calls the roll, made up from the credentials filed with him, and, if a quorum is present, announces that fact, and that the first business in order is the election of a Speaker. Nominations for that office are then made, and, under the supervision of tellers, named by the clerk from among the members, the roll is called by him, and the result announced. The oath of office is administered to the Speaker by a member of the House, the habit being to devolve that duty upon the member who has had the longest continuous service—the "Father of the House," as he is called. The members from each State are then called, and the oath of office is administered to them by the Speaker. The adoption of a body of rules for the House has not always been an easy matter, and sometimes great delay and much excitement have attended the work. Often, by resolution, the rules of the last House

Organizing the House.

are adopted to govern the proceedings until a new code is prepared and receives the concurrence of the House. If some such expedient is not adopted the House proceeds without any rules, except so far as the general rules of parliamentary law may be applicable.

Officers of the House.

The House then proceeds to elect its other principal officers, viz., a clerk, a sergeant-at-arms, a chaplain, a door-keeper and a post-master. The House, at its first session (1789), ordered that a suitable symbol of office be provided for the Sergeant-at-Arms, to be borne by him when executing his office. This order was executed by the Speaker by procuring a mace. The staff of the mace is a representation of the Roman fasces and is surmounted by a globe and an eagle in silver. It stands during the sessions of the House at the right of the Speaker, and is carried by the Sergeant-at-Arms when he is called upon to enforce order on the floor.

When the two Houses have organized, and a quorum is present, each by resolution directs its secretary or clerk to notify the other of that fact. And in like manner, the Senate, when it chooses a President *pro tempore*, and the House, when it chooses a Speaker, certifies each to the other, and each to the President of the United States, the name of its presiding officer. A joint committee

of the two Houses is appointed to wait upon the President, and to inform him that a quorum of each House is assembled, and that Congress is ready to receive any communication that he may be pleased to make.

The seats in the Senate are assigned as follows: The Senator who first expresses a preference for a vacant seat, or one to become vacant, gets it. When a seat is thus assigned the Senator may retain it so long as he remains a member of the Senate. In the House the seats are assigned by lot at the beginning of each Congress.

Assignment of seats.

When the committees are constituted the Houses are ready for the transaction of business. Legislative measures are chiefly initiated by the introduction of bills by individual Senators or Representatives. In the Senate the presentation of petitions and memorials and the introduction of bills and joint resolutions are two of the orders called by the presiding officer each morning, and the Senators, each as he may secure recognition, present such petitions or bills as they may desire. In presenting a petition the Senator states briefly its purport and asks its reference to the appropriate committee. When a bill is offered it is carried by a page to the clerk's desk, the title is read, and an appropriate reference is ordered by the presiding officer—unless the Senate by a vote

Petitions — Introduction of bills.

itself directs the reference. This general practice as to the presentation of petitions and the introduction of bills prevailed until recently in the House also. But, for the saving of time, the new rules of the House provide for the delivery to the clerk of petitions and bills of a private nature, the name of the member and the reference desired being endorsed thereon; and of all other bills, memorials, and resolutions to the Speaker, to be by him referred to the appropriate committees. The fact of presentation and the reference made are entered on the journal and published daily in *The Record*. The reference may, of course, be changed by the House. All bills and resolutions are numbered, printed, and laid upon the desks of the members. The numbers begin anew in each House with each Congress, thus: "S. 1," or "H. R. 1."

Passing of bills —Amendments.

When a bill passed by one House is passed by the other with amendments, and the former does not concur in the amendments, this non-concurrence is announced and a Committee of Conference is asked for. Conference committees usually consist of three members from each House. They constitute really two committees, and each votes by a majority. These committees report from time to time their agreements or disagreements to their respective Houses, and take the orders of those

bodies until an agreement is reached, or a final failure to agree is disclosed. The Houses communicate their proceedings each to the other by messages delivered by the Secretary or Clerk, thus: The Secretary of the Senate appears in the House, is announced by the doorkeeper, addresses the Speaker, and having been recognized, delivers his message, as: "I am directed by the Senate to inform the House that it has passed Senate bill No. —— [giving the title] and that the concurrence of the House therein is respectfully requested." The bill is sent to the Speaker's desk and the message is entered in the journal. If the bill is passed by the House it is carried back to the Senate by the clerk of the House with a message announcing the action taken. It is then enrolled, signed by the President of the Senate, the fact of signing being announced to the Senate and entered on the journal, is carried again to the House, signed by the Speaker, the fact of signing being announced and entered as in the Senate, and is then ready to be sent to the President for his approval. If the President approves the bill he notifies the House in which the bill originated of his approval, and the fact is by that House entered on its journal and communicated to the other House. A complete history of the bill is thus preserved in the journals.

Messages.

Signing of bills.

Revenue bills—appropriations.

Revenue bills, such as a general tariff bill, and bills appropriating money for the support of the Government, originate in committee. The Treasury Department collects from all the other Departments estimates of the amount of money needed for the next fiscal year, and, adding the estimates for his own Department, the Secretary of the Treasury compiles them in a book of estimates, which is printed and sent to Congress at the beginning of each regular session. These estimates are the basis of the appropriation bills; but the committees do not follow the estimates closely—now refusing to give anything for a specified object, and now giving much less than is asked. If too little has been given a deficiency bill at the next session supplies the lack.

In the House the Committee on Ways and Means takes control of all revenue bills, and in the Senate the Finance Committee has them in charge. Until recently the Committees on Appropriations of the House and Senate had charge of all general appropriation bills, but now in the House that committee has charge only of the appropriations for legislative, executive, and judicial expenses, for sundry civil expenses, for fortifications and coast defences, for the District of Columbia, for pensions, and for all deficiencies;

while the other appropriation bills are prepared by the committees having general charge of the legislation relating to the department appropriated for; thus, the army appropriation bill by the Committee on Military Affairs, the naval appropriation bill by the Committee on Naval Affairs, etc. In the Senate the Committee on Appropriations still has charge of all general appropriation bills, except those for rivers and harbors, which are referred to the Committee on Commerce.

A bill not passed by both Houses fails at the end of the Congress, and must be again introduced in the next Congress, if its further consideration is desired.

Only a few of the specified powers of Congress can be mentioned here. A very important exclusive function is given to the House: "All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills." So runs Section 7 of Article 1. There was much discussion in the Convention over this clause. After much debate the following resolution was adopted by a vote of five States to four:

Revenue bills must originate in the House.

Resolved, That all bills for raising or appropriating money, and for fixing the salaries of officers of the Gov-

ernment of the United States, shall originate in the first branch of the Legislature of the United States, and shall not be altered or amended in the second branch; and that no money shall be drawn from the public treasury but in pursuance of appropriations to be originated in the first branch.[1]

This resolution left to the Senate only the power to negative bills for raising revenue, bills making appropriations, and bills fixing salaries. It could not propose the expenditure of the smallest sum from the public treasury, nor the modification of a tariff bill sent to it, in the smallest particular. Its power would have been like that of the President, to approve or to veto, save that the veto was absolute, for no bill could become a law that the Senate rejected. Mr. Wilson, of Pennsylvania, said in the Convention that, as there were to be two strings to the public purse, one in the hands of the Senate and the other in the House, "of what importance could it be which untied first, which last?" Subsequently the resolution was reconsidered by a vote of four States to seven.

The clause as adopted, it will be observed, gives to the House the exclusive power of originating "bills for raising revenue," but leaves the Senate full powers of amendment. A bill for raising

[1] Elliot's Debates, vol. 5, p. 316.

revenue must first pass the House, but when it reaches the Senate it may be so amended as to be practically a new bill.

It will be noticed that as originally proposed the clause embraced all bills appropriating money from the Treasury, and all bills for fixing official salaries, and that these provisions were stricken out. There can be no doubt, I think, that appropriation bills and bills fixing salaries may constitutionally originate in the Senate. Many bills appropriating money do, in fact, originate there, such as bills granting pensions, for the payment of claims, etc.; but a practice has grown up that all of the general appropriation bills, such as the Legislative, Executive, and Judicial, the Army and Navy, the Sundry Civil, the Deficiency, the Indian, etc., shall originate in the House. This practice has become so settled that the House would probably refuse to consider a general appropriation bill sent to it by the Senate.

Origin of appropriation bills.

Justice Miller, in his lectures upon the Constitution, remarks upon the singular fact that so little comment is to be found upon this clause of the Constitution, and though himself holding that under our system the origination of appropriation bills is not within the exclusive power of the House, he adds that "this has been the practice now for

so long a time that it may be doubted whether it will be seriously questioned." [1]

Washington's form of address.

Washington scrupulously recognized in his addresses the exclusive power of the House to originate revenue bills. In his first inaugural address he introduced the statement of his purpose to have the estimates for the pay of the President limited to his actual expenditures by saying that the request "will be most properly addressed to the House of Representatives." In his annual addresses also, delivered to a joint assembly of the two Houses, all suggestions as to revenue were introduced by the specific address: "Gentlemen of the House of Representatives."

The taxing power limitations.

One of the most important and necessary powers of government is the taxing power. It was essential that the United States should have such powers, and it was desirable that its revenues should be as far as possible derived from sources that the States could not fully or at all avail themselves of. Duties on imports are essentially such. It was essential, too, that the regulation of foreign commerce should be single and uniform, and obviously just that the imposts laid upon such commerce should be used for the benefit of all the States. So the excise taxes now

[1] Miller on the Constitution, p. 204.

laid on whiskey and tobacco, and formerly upon many other articles, are taxes that are not fully available to the States. They must be uniform in the whole country, so that the manufacturer may not find the burden lighter in one State than in another. In practice, these sources of revenue are adequate for ordinary times. But they might prove inadequate to the national necessities, especially in war times. It was essential that in times of national stress all of the resources of the country should be subject to the taxing power of the nation. Section 8 of Article 1 provides that, "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." The scope of the taxing power is limited by a declaration of the purposes for which it may be used, but these are very broadly stated. And there are also several limitations as to the manner of exercising it.

It is provided that all duties, imposts, and excises shall be "uniform throughout the United States"; that "no capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken"; that "no tax or duty shall be laid on articles exported from any State"; that "no preference shall be given by any regulation of commerce or revenue to the ports

of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another." The power to lay imposts or duties on imports or exports, except such as are absolutely necessary for executing their inspection laws, is expressly denied to the States, unless Congress consents, and then the net revenue derived is to be paid into the United States Treasury.

Duties, imposts, and excises must be uniform, but they have no relation to population. A distiller of spirits in Indiana cannot be required by the United States to pay a higher tax per gallon than is exacted of a distiller in Illinois; but it may happen that the aggregate tax collected in Illinois is many times greater than the aggregate collected in Indiana, because of the larger production of spirits in the former State. But as to "capitation or other direct taxes" the Constitution provides that they shall not be laid "unless in proportion to the census or enumeration hereinbefore directed to be taken." The United States, when it resorts to direct taxation, first fixes the amount to be raised, divides that sum by the total population of the United States, to ascertain how much it will be per capita, and then multiplies this per capita by the population of each State. The result determines how much the people of each State must pay.

The distinction between a direct and an indirect tax is not always easily taken. In the recent Income Tax case the Supreme Court held that a tax on incomes is a tax on the property from which the income is derived, and therefore a direct tax.

Direct and indirect taxes.

The power given to Congress "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes," is one of the broadest and most essential of its enumerated powers. The commerce "among the several States"—the carrying of merchandise and passengers from one State into another, by the railroads and canals, and by river, lake, and coast-wise vessels—has grown to enormous proportions, greatly surpassing our foreign commerce. The great bulk of our exports and imports becomes part of this interstate commerce, in its transit to or from the great sea-ports. Nearly all railway passenger trains, except the suburban trains—and many of them—are engaged in interstate commerce. Nearly every freight-train has some cars billed from points in one State to points in another. The tracks, engines, and cars are all instruments of this commerce. And so of all the steam-boats on the Ohio, the Mississippi, and other rivers that traverse more than one State. Ferry-boats become agencies of interstate com-

Commerce among the States.

merce when the waters they traverse divide States. The telegraph also is an agency of commerce between the States. The exclusive power reserved to Congress to regulate this commerce and the instruments with which it is conducted is one of ever-widening application. The laws for the inspection of steam-vessels, the licensing of their officers, requiring certain safety appliances, limiting the number of passengers that may be carried, requiring air-brakes and automatic couplers on freight-cars, and the Interstate Commerce Law are all exercises of the power of Congress to regulate commerce. A State may regulate fares and freights from one point in the State to another, but it cannot lay any restraint or regulation upon the carrying of passengers or freights out of the State into another State, or from another State into it. If a railroad is engaged in interstate commerce its tracks in every State in which they are laid are a part of the interstate line, and as such are, in a measure, subject to be regulated by Congress, and may be protected by the National Government.

Laws regulating commerce.

This power over these agencies of commerce is further broadened by the fact that they are also the agencies of the postal service. The statutes of the United States declare all the waters of the United States, during the time the

mail is carried thereon; all railroads or parts of railroads which are now or hereafter may be in operation; all canals and plank-roads, during the time the mail is carried thereon, to be "established post-roads." The roads of commerce are also "post-roads"; and the obstructing or retarding of the passage of the mails over such routes is an offence against the laws of the United States, punishable in the Courts of the United States. In like manner the obstruction of the transportation of passengers or merchandise from one State to another, is an offence against the United States, and if accompanied with violence is a breach of the peace of the United States.

Mail routes and commerce.

Most of the other great powers of Congress have been alluded to in a preceding chapter. After their enumeration this further comprehensive grant is made: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." Some limitations are then imposed, but it is not necessary to enumerate them here.

CHAPTER IV

THE PRESIDENT

A Single Executive—Cabinet Officers—Term of the President—Manner of Choosing—Electoral College—Elections by House and Senate.

The Second Article of the Constitution deals with the Executive Department of the Government. It declares that "the Executive power shall be vested in a President of the United States of America," and that "he shall hold his office during the term of four years." These conclusions were not arrived at in the convention without difficulty. Should the Executive be single or plural—one President or several? Some of the ablest men in the convention wanted a plural Executive. One President too strongly reminded them of the King from whose tyrannical and cruel grasp the Colonies had just escaped. Roger Sherman, of Connecticut, wished that the number should be left to the determination of Congress. Edmund Randolph, of Virginia, "strenuously opposed a unity in the Executive magistracy." He regarded it as "the fœtus of monarchy." And on the final vote three States—

A single or plural executive.

New York, Delaware and Maryland—voted against the proposition that the Executive consist of a single person. Experience has so fully justified the conclusion reached by the convention in this matter, that no change has ever been suggested. The incumbent has never satisfied every one, but the discontented have never sought relief by giving him a double. Executive direction should always be single. When anything is wrongly done, we must be able to put a hand on the man who did it. The sense of responsibility begets carefulness, and that sense is never so perfect as when, after full consultation, the officer must go alone into the chamber of decision. In all of the recent reform city charters this principle is made prominent—by giving the Mayor the power to appoint the city boards and officers, and so making him responsible for the efficiency of the city government. Two presidents or three, with equal powers, would as surely bring disaster as three generals of equal rank and command in a single army. I do not doubt that this sense of single and personal responsibility to the people has strongly held our Presidents to a good conscience, and to a high discharge of their great duties.

It was proposed in the convention to provide an Executive Council that should exercise a measure of restraint upon the acts of the President;

but the suggestion was wisely rejected. A many-headed Executive must necessarily lack that vigor and promptness of action which is often a condition of public safety. A distinguished public man is reported, perhaps erroneously, to have very recently expressed the opinion that each Cabinet officer should be independent in the administration of his department, and not subject to control by the President. The adoption of this view would give us eight Chief Executives, exercising, not a joint, but a separate control of specified subdivisions of the Executive power, and would leave the President, in whom the Constitution says "the Executive power shall be vested," no function save that of appointing these eight Presidents. It would be a farming-out of his Constitutional powers. It is not intended to discuss here the true relation between the President and his Cabinet—that subject will be considered in its order—but only to point out that the responsibility under the Constitution for the Executive administration of the Government in all its branches is devolved upon the President. A Cabinet independent, after appointment, of the Executive, and not subject, as in England, to be voted out by the Legislature, would be an anomaly. Mr. Stevens, in his "Sources of the Constitution of the United States" (p. 168), gives an interesting account of an

An Executive Council — Cabinet Officers.

interview with President Hayes from notes made at the time, in the course of which President Hayes said that

> In matters of a department, he gave greater weight to the opinion of the Secretary of that department, if the Secretary opposed his own views; but on two occasions, at least, he had decided and carried out matters against the wishes of the Secretary of the department affected. He had done so in the case of his Secretary of the Treasury (Sherman), whose opinion he usually valued. In each case, knowing the certainty of diverse views from the Secretary, he had not asked those views, but had announced to the Secretary his own policy and decision.

President Hayes's view.

As to the term of the Presidential office, the conclusion of the Constitutional convention has been less fully acquiesced in. In the convention, opinions shifted from a long term with a provision making the person chosen ineligible to a re-election, to a short term without any such restriction. On June 1st the convention, in committee of the whole, voted for a term of seven years, and on June 2d a provision was added making the incumbent ineligible to a second term. The vote on the question of a seven-year term stood in the affirmative, New York, New Jersey, Pennsylvania, Delaware and Virginia; in the negative, North Carolina, South

Presidential term — Discussions in Convention.

Carolina, Georgia and Connecticut; Massachusetts was divided. On the question of making the Executive ineligible after seven years, Massachusetts, New York, Delaware, Maryland, Virginia, North Carolina and South Carolina voted in the affirmative; Connecticut and Georgia in the negative, and Pennsylvania was divided. On July 19th, the subject being again before the convention, it was voted, nine States in the affirmative to one (Delaware) in the negative, to make the term six years. On July 26th the original proposition of the committee of the whole "that the Executive be appointed for seven years, and be ineligible a second time," was reinstated and passed. On September 6th, by a final vote, the term was fixed at four years, and no restraint was put upon the eligibility of the President for as many terms as he might be chosen. The fears of those who said that the power of the office was such as to enable an ambitious incumbent to secure an indefinite succession of terms have not been realized. In practice the popular opinion has limited the eligibility of the President to one re-election. But some of our leading and most thoughtful public men have challenged the wisdom of the four-year term, and have advocated six years, usually accompanied with a prohibition of a second term. And unless some method

Six years and no re-election.

can be devised by which a less considerable part of the four-year term must be given to hearing applicants for office and to making appointments, it would be wise to give the President, by extending the term, a better chance to show what he can do for the country. It must be admitted, also, that ineligibility to a second term will give to the Executive action greater independence. It seems unlikely, however, that any change in the Presidential term will be made unless some unexpected event should stir into action a thought that is now of a theoretical rather than a practical cast. Our people are wisely conservative in the matter of amending the Constitution.

Manner of choosing—plans proposed.

The provisions of the Constitution relating to the manner of choosing the President are of peculiar interest, for the reason that, while we still follow the letter of the Constitution, we have practically adopted a new, and to the framers of the Constitution, an unthought-of method. Various methods of choosing the President were proposed in the convention. Mr. Wilson, of Pennsylvania, one of the most learned and useful members of the convention, proposed that the States be divided into a certain number of election districts, and that in each the people choose "electors of the Executive magistracy." Mr. Roger Sherman was for an election by

Congress. Mr. Rutledge suggested an election by the Senate. Mr. Gerry proposed that the President should be chosen by the Governors of the States or by electors chosen by them. Mr. Wilson proposed an election by electors to be chosen by lot from the National Legislature. He did not move this as the best mode, but still thought the people should elect. As a member of the Pennsylvania convention, he said, "The convention were perplexed with no part of this so much as with the mode of choosing the President of the United States." It was determined that electors should be chosen in each State, and that they should meet and elect the President and Vice-President. How the electors should be chosen, and how many each State should have, was next a subject of debate and division. It was finally determined that "each State shall appoint in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress." Indiana has thirteen Representatives in Congress and two Senators, and chooses, therefore, fifteen electors of President and Vice-President. Rhode Island has two Representatives in Congress and two Senators, and chooses four electors of President and Vice-President, and so of the other

One elector for each Senator and Representative.

States. The number of Representatives that a State has in Congress is determined, as we have seen, by its population, and the population is ascertained by a census taken every ten years. The unit of representation—that is, the number of people that shall be entitled to a Representative in Congress—is fixed by law every tenth year, after the census returns of population are in. The Constitution provides that the number of Representatives shall not be greater than one for every thirty thousand. Upon the basis of one for every thirty thousand the House of Representatives would now consist of 2,333 members, estimating our total population at 70,000,000. The Electoral Colleges would, of course, have the same number of electors, plus ninety—the whole number of the Senators. But under the law of February 7, 1891, the whole number of Representatives is fixed at three hundred and fifty-six—one for each 175,905 of population—to which is to be added the Representative from Utah, since admitted to the Union. The whole number of the electors of President and Vice-President is now (1897) four hundred and forty-seven—three hundred and fifty-seven plus ninety. The assembled electors of a State are not called a "college" in the Constitution, but they have been so designated in the statutes.

Unit of representation—number of electors.

The manner of choosing the electors is left by the Constitution to the Legislatures of the respective States. The method most used has been to choose the electors by a popular vote in the whole State—each voter voting for the whole number of electors to which the State is entitled. The general practice of the political parties is to allow each Congressional district to nominate an elector, who is designated a district elector, and in a State convention to nominate the two electors given for the Senators, usually called electors-at-large or Senatorial electors.

Manner of choosing electors.

In a few of the States the laws require the district electors to be residents of their respective districts, and in the other States the practice is so. But all of these are put on the State ticket and are voted for throughout the whole State, and usually are all elected, or none; though, in a few instances, some one elector on a party ticket has been chosen and the others defeated. But this method of choosing electors has not been universal. In some States the electors have been chosen by a vote of the Legislature, and in Michigan in 1891, the Democratic party being in the ascendency in the Legislature, and the Republicans probably having a majority on the popular vote in the whole State, a law was passed giving to each Congressional district the

right to choose an elector, and to the whole State the right to choose only the two Senatorial electors. By this method those Congressional districts that had a Democratic majority could choose electors of that party and thus divide the electoral vote of the State. It is greatly to be desired that a uniform method of choosing Presidential electors should be adopted, so as to free the selection as much as possible from partisan juggling. The purpose of the convention was to provide for the selection of a body of well-informed, patriotic men, who should elect as President the man whom they should think best fitted for the high office. Their choice was not to be constrained by pledges, nor limited by nominating conventions. But while we still use the letter, the spirit of the Constitution was speedily subverted. Presidential candidates are nominated in national party conventions, and the electors of the party are regarded as honorably bound to vote for the nominee, whatever may be their individual opinion as to his fitness for the office. An elector who failed to vote for the nominee of his party would be the object of execration, and in times of very high excitement might be the subject of a lynching.

A uniform method desirable.

Spirit of the Constitution subverted.

The origin of the Electoral College has been the subject of much speculation. The only American

precedent is found in the first Constitution of Maryland, where provision was made for the choice of State Senators by electors chosen by popular vote in specified districts. In the Massachusetts convention Mr. Bowdoin said: "This method of choosing the President was probably taken from the manner of choosing Senators under the Constitution of Maryland." An attempt has been made by some to find the suggestion of the Electoral College, as we have come to call it, in the method formerly in use of choosing the German Emperor, and by others in the method of choosing a Pope by the College of Cardinals. Sir Henry Maine says: "The American Republican electors are the German Imperial electors, except that they are chosen by the several States." As Maryland, where the electoral system was first used, was a Catholic colony, the suggestion that the idea was derived from the College of Cardinals seems plausible. There is this difference: our electors are not a permanent body, but men chosen every four years. We are in the habit of speaking of the Presidential election as taking place on the first Tuesday after the first Monday of November, in every fourth year, but in fact no vote is given for President and Vice-President at that time at all. The names of the party nominees for President and Vice-President

Origin of Electoral College.

President chosen in January.

are sometimes printed on the ballots, but no voter votes, or can vote, for them and no account is taken of them on the tally sheets. He votes for certain men whose names are on the ticket as electors; and, by the Act of February 3, 1887, the electors chosen assemble in each State at the Capital on the second Monday of January following and vote for a President and Vice-President. These votes from each State are sealed and sent in duplicate to the President of the United States Senate, one copy by mail and the other by a special messenger. So that, in fact, our President is elected on the second Monday in January in every fourth year, though we are not in doubt, after the November election, as to who will be chosen, because the electors are morally bound by the nomination of their party in convention.

The original provision of the Constitution did not allow the electors to vote separately for a President and Vice-President. They were required to vote for two persons, at least one of whom should be a resident of another State than their own. Either of these persons might become President, for the person having the highest number of votes, when the votes of the States were opened by the President of the Senate and counted, if that number were a majority of all the votes, became Presi-

President and Vice-President not voted for separately at first.

dent, and if it happened that two persons had a majority and an equal number of votes, as it might, then the House of Representatives was required to choose one of these persons to be President—the vote being by States—each State, by a majority of its members, casting one vote, and a majority of all the States being necessary to a choice. If no person had a majority of the votes of the electors, the House was then to choose a President from the five highest on the list. After the choice of the President, the person having the highest number of votes in the Electoral College was to be Vice-President; and if two had an equal number, the Senate was to choose one of them to be Vice-President. It was by this crude and awkward method that Washington, John Adams, and Jefferson (for his first term) were chosen. In 1800 the candidates for President and Vice-President of the Federal Party were Adams and Pinckney; of the Republican Party, Jefferson and Burr. Jefferson and Burr each received seventy-three votes; Adams received sixty-five, and Pinckney sixty-four. This result necessitated the election of a President by the House of Representatives.

Elections by House and Senate.

Election of Jefferson by the House.

The Senate and House met in joint session, and the count having disclosed that there was no election by reason of the tie between Jefferson and

Burr, the House returned to its chamber and, under rules previously adopted, proceeded to vote for a President. Sixteen ballot boxes—one for each State—were provided, and the members from each State, seated together, deposited their ballots in the box assigned to them, and then by tellers of their own counted the ballots. Two other boxes were then carried around to the delegations by the Sergeant-at-Arms, and in each of these a duplicate ballot, showing the choice of the State, was deposited. If a majority of the members from a State voted for the same person, the vote of the State was cast for him—but, if no person had a majority, duplicate ballots with the word "divided" upon them were deposited. The two boxes were then carried to separate tables and counted by tellers. If the vote in the two boxes agreed, the result was accepted; otherwise, a new ballot was to be taken. The rules provided that the balloting should proceed without adjournment and without interruption by other business until a President was chosen. It was provided that all questions "incidental to the power of choosing the President" should be decided by a vote of the States, but the decision as to whether a particular question was of that sort was to be by a per capita vote of the whole House. The balloting began February 11 (1801) and continued until February

17th, when on the thirty-sixth ballot Jefferson was chosen by the votes of ten States—of which fact the President and the Senate were at once notified. Aaron Burr became Vice-President by the vote of the electors — after Jefferson had been chosen President—and not by a vote of the Senate. The certificate which the Senate directed its President to sign, after reciting that Jefferson and Burr had each received the same number of votes, and a majority of the electors, and that Jefferson had been elected President by the House of Representatives, concluded thus: "By all of which it appears that Aaron Burr, Esq., of New York, is duly elected Vice-President of the United States of America."

In 1803 Congress proposed an amendment to the Constitution, the twelfth, which was adopted in 1804, and has ever since been in force. The votes are now given in the Electoral College for a President and Vice-President separately. The person having the highest number of votes for President, and a majority of all the votes, is elected; and so of the Vice-President. If no person has a majority of the votes for President then the House of Representatives is required from the three having the largest number of votes to choose a President, the vote being taken by States as before. If a Vice-Presi-

Now voted for separately.

dent is not chosen by the electors the Senate elects him "from the two highest numbers on the list." If the House of Representatives, when the choice devolves upon it, does not choose a President before the 4th of March, then the Vice-President acts as President, as in the case of the death, or other constitutional disability, of the President. Since the adoption of the Twelfth Amendment there has been one case of the failure of a choice by the electors for President (1825), and one of a failure to elect a Vice-President (1837).

In 1825, Andrew Jackson, John Quincy Adams, William H. Crawford, and Henry Clay were voted for by the electors for President, and none of them had a majority. The count of the votes having been made, the House, under rules almost identical with those used in 1800, proceeded to choose a President. Jackson, Adams, and Crawford, the three persons having the "highest numbers" of the electoral votes, were eligible to be chosen by the House. On the first ballot John Quincy Adams received the votes of thirteen States out of twenty-four, and was elected President. John C. Calhoun had received a majority of the votes of the electors for the office of Vice-President, and had been declared elected on the count.

Election of J. Q. Adams by the House

In 1837, no one having a majority of the votes for Vice-President, the Senate elected Richard M. Johnson, the Democratic candidate, who had received the highest electoral vote.

Of R. M. Johnson by the Senate.

CHAPTER V

THE PRESIDENT (CONTINUED)

QUALIFICATIONS—SUCCESSION — NOTIFICATION — INAUGURATION— MESSAGES.

THE Constitution requires that the President shall be a natural-born citizen of the United States, or shall have been a citizen at the time of the adoption of the Constitution. Qualifications of President. If there is in the country a foreign-born citizen who was a citizen of the United States in 1789 (and possibly there is such a person), he is eligible to the Presidency; but, as he must now be at least one hundred and eight years of age, we may read the exception in behalf of that class out of the Constitution. At the time of the adoption of the Constitution there were conspicuous statesmen and patriots, such as Hamilton, who were foreign born, and whose services in securing our freedom and in organizing the Government were such that it would have been ungracious to have made them ineligible to the Presidency. The President must be thirty-five years of age, and have been fourteen years a resident of the United States. In case of

the death, resignation, or inability of the President, or his removal from office, the powers and duties of the office devolve upon the Vice-President, and in the case of the removal, death, resignation, or inability of both the President and Vice-President, Congress is empowered to declare what officer shall act as President—and that officer acts until the disability is removed or a President is elected.

Presidential Succession.

The first law passed by Congress fixing the succession was in 1791, and its provisions were that in case of the death, resignation, or disability of both the President and Vice-President, the President *pro tempore* of the Senate should succeed to the office of President, and, if there was no President of the Senate, then the Speaker of the House of Representatives should take the office.

The Presidential and Vice-Presidential offices have never in our history both become vacant during a Presidential term. Four Presidents have died in office—Harrison, Taylor, Lincoln, and Garfield, but the Vice-President took up the office and survived the term. Vice-Presidents Clinton, Gerry, King, Wilson, and Hendricks died in office. John C. Calhoun resigned to become Senator from South Carolina. In 1886 a new statute was passed by Congress changing the succession, and now in the event of the death, removal, or disability of both

the President and Vice-President, the succession devolves upon the members of the Cabinet in the following order: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, Secretary of the Interior.

Counting electoral vote.

The Constitutional provision for counting the votes after they are sent in to the President of the Senate, and by him opened in the presence of the Senate and House assembled in joint session, is a little indefinite: "And the votes shall then be counted," says the Constitution. There was no question raised so long as it was only a matter of addition. But there came a time, in 1876, when two returns of electoral votes appeared from the same State and for different persons, and the question then became acute and very threatening. Who was to decide which of them was the rightful vote of the State—the President of the Senate, the joint body voting as one body, or the Senate and House voting separately in their own chambers? And if, so voting, they differed, what was to be done? There was then no method of settling in the courts beforehand the question which of the rival bodies of electors was the true one, and as the question whether Mr. Hayes or Mr. Tilden had been elected turned on the question which of certain

returns were the true ones, a dangerous crisis was precipitated. This was settled by an expedient, *viz.:* an Electoral Commission, or Court, consisting of five Senators, five Representatives, and five Judges of the Supreme Court, to try the disputed questions, and this Commission decided in favor of Mr. Hayes. As an outcome of this, February 3, 1887, Congress passed an act containing the following provisions: Section 2 provides that any contest regarding the choice of electors must be decided, as provided by the laws of the State, at least six days before the meeting of the electors on the second Monday in January. Section 3 provides that a certificate of election must be issued by the State Executive in triplicate to the electors and transmitted by them to the President of the Senate with their votes for President and Vice-President. Section 4 provides that objection to the reception of any return must be in writing, and signed by one member of each House. "No electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to, according to Section 3 of this Act, from which but one return has been received, shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by

Electoral commission of 1876—Law of 1887.

electors whose appointment has been so certified. If more than one return, or paper purporting to be a return, from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in Section 2 of this Act to have been appointed, if the determination in said section provided for shall have been made. . . . But in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in Section 2 of this Act, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its laws. And in such case of more than one return, or paper purporting to be a return, from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally ap-

pointed electors of such State." If the two Houses disagree, the votes of those electors holding the certificate of the State Executive shall be counted.

Notification of election.

Washington was orally notified of his first election to the Presidency by Charles Thomson, who had been secretary of the old Congress. In his address, Mr. Thomson said he had been "honored with the commands of the Senate to wait upon Your Excellency with the information of your being elected to the office of President of the United States of America." He also presented a certificate signed by John Langdon, who had been "appointed President of the Senate for the sole purpose of receiving, opening, and counting the votes of the electors," that "His Excellency George Washington, Esq., was unanimously elected, agreeably to the Constitution, to the office of President of the said United States of America." A practice grew up to notify the President-elect of his election through a committee of Congress, appointed for that purpose; but the practice has not been uniform and has now fallen into disuse.

There hangs in my library a parchment which reads as follows:

Be it known, that the Senate and House of Representatives of the United States of America, being convened at the city of Washington, on the second Wednesday of

February, in the year of our Lord one thousand eight hundred and forty-one, the under-written Vice-President of the United States and President of the Senate, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the electors for a President and Vice-President of the United States: whereupon, it appeared that William Henry Harrison of Ohio, had a majority of the votes of the electors as President; by which it appears that William Henry Harrison of Ohio, has been duly elected President of the United States, agreeably to the Constitution, for four years commencing with the fourth day of March, in the year of our Lord one thousand eight hundred and forty-one.

In witness whereof, I have hereunto subscribed my name and caused the seal of the Senate to be affixed, this tenth day of February, eighteen hundred and forty-one.

RH. M. JOHNSON,
Vice-President of the United States and President of the Senate.

By the Vice-President.
ASBURY DICKENS,
Secretary of the Senate.

The President-elect now receives no official notice of his election, nor any commission or certificate of the result of the count. He takes notice himself and presents himself on the 4th of March to take the oath of office.

None given now.

He usually goes to Washington a few days,

often as much as a week, before the 4th of March. He may not have conclusively selected all of the members of his Cabinet, and at the Capital he can pursue such final inquiries as he desires to make with more freedom and despatch than at home. He calls upon the President at once, and the latter returns the call within the hour. General Jackson imputed to his predecessor, Mr. Adams, some connection with the circulation of certain offensive campaign stories, and declined to call upon him. Mr. Adams resented this discourtesy, and declined to attend the inaugural ceremonies. It is said that he was taking a horseback ride in the suburbs when the guns saluted his successor.

The inauguration.

On the 4th of March, when the time for starting the inaugural escort is near, the President-elect is taken by the committee in charge to the Executive Mansion, where he joins the President, and, entering his carriage, is driven with him to the Capitol.

The Constitution requires that before assuming his office the President shall take the following oath or affirmation:

I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States.

Oath of office.

The oath is usually administered by the Chief Justice of the United States, in the presence of the people, upon a platform erected on the east front of the Capitol. When Washington was first inaugurated the Supreme Court of the United States had not been organized, and the Chancellor of the State of New York was selected to administer the oath. When the oath had been taken the Chancellor proclaimed "Long live George Washington, President of the United States." A Bible is used in the administration of the oath, and the President kisses the open page of the Book. After the administration of the oath the President delivers an address. This address is of a popular character, and in ordinary times is not a very important state paper. Now and then, however, as on the first inauguration of Mr. Lincoln, the address is of the highest significance and value, as a forecast of administrative policies. To Washington's first inaugural address each House made a return address, and Washington a reply. The Senate returned "sincere thanks for your excellent speech." Since then there has been no response from either House to the inaugural address of the President. Congress, in the usual course of things, is not in session when the President takes the oath of office, as it was when Washington was

"Long live George Washington."

Inaugural address.

first inaugurated, and so the form of inaugural address is "My Fellow-Citizens."

Return to White House—Review.

When the inaugural ceremonies are completed, the President and the ex-President again take their places in the carriage—the ex-President now on the left—and are rapidly driven to the Executive Mansion, where the wife of the President joins him. They are usually received by the wife of the ex-President, or by the lady who may stand in her place. The ex-President then withdraws, and the President goes to the reviewing stand which is placed on the avenue in front of the Executive Mansion. The procession is usually several hours in passing, and the exposure, especially if the day is raw and wet, as it often is, is not only very uncomfortable, but really perilous to life. The close of the Congress and the beginning of the President's term should be changed to May 4th. This would make the "short session" available for something besides the appropriation bills, would diminish the chances of a Vice-Presidential succession, and save many useful lives—for I do not doubt that the exposure and suffering endured by the parading organizations and by the spectators in 1881, 1889, and 1893, carried many people to premature graves.

The Constitution provides that the President "shall from time to time give to the Congress in-

formation of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." Out of this provision, as well as the obvious necessity of the case, the annual message of the President has come. In the beginning it took the form of an address, delivered by the President orally to the two Houses assembled in joint convention, and during the administrations of Washington and John Adams the Senate and House each made a responsive address to the President, to which he made a reply.

Annual Messages —at first oral.

Mr. Jefferson sent his first annual message to Congress in writing—a copy to each House—and accompanied it by a letter in duplicate to the President of the Senate and to the Speaker of the House, in which he said that he adopted this course because the circumstances rendered "inconvenient the mode heretofore practised of making by personal address the first communications between the Legislative and Executive branches," and mentioned the fact that communications by written messages had been the practice "on all subsequent occasions through the session." He thought the course he adopted would be more convenient and would relieve the Houses "from the embarrassment of immediate answers on subjects not yet fully before them." The usage

Mr. Jefferson sends a written message.

thus inaugurated by Jefferson of sending the annual messages to Congress in writing by a secretary—a copy to each House — has become the settled practice, and the practice of making responsive addresses has been abandoned.

Reference of Message.

In the Senate there is now an order to print, and in the House a like order and a reference of the message to the Committee of the Whole on the State of the Union. If any of the recommendations of the message are approved by Congress that approval is expressed by the passage of laws to carry them into effect. Once, when the message was very long, a jocular member of the House suggested a reference to the "Committee on Mileage."

Inauguration of Vice-Presidents

When Vice-Presidents Tyler, Johnson, and Arthur succeeded to the Presidency, Congress was not in session, and the oath of office was administered without the usual formalities. When President Taylor died Congress was in session, and the following proceedings were taken: Vice-President Fillmore, in a communication addressed to the Senate, announced the death of the President, and that the Vice-President would no longer act as President of the Senate. In another communication, addressed to both Houses, he made the same announcement and added: "I propose, this day, at twelve o'clock, in the Hall of

the House of Representatives, in the presence of both Houses of Congress, to take the oath of office prescribed by the Constitution, to enable me to enter on the execution of the office which this event has devolved on me."

The two Houses assembled in joint session at the hour named, and the oath of office was administered. There was no address by Mr. Fillmore.

CHAPTER VI

THE PRESIDENT (CONTINUED)

ENFORCEMENT OF THE LAWS—THE APPOINTING POWER—SENATE'S REQUEST FOR PAPERS—CONTROVERSY WITH PRESIDENT CLEVELAND—VACATION APPOINTMENTS—RELATIONS OF CABINET OFFICERS—USAGE AS TO CONGRESSIONAL INFLUENCE IN APPOINTMENTS—SENATORIAL COURTESY—CIVIL SERVICE.

HAVING considered the manner of electing the President, his induction into office, and the manner in which he communicates with Congress, let us now look at some of his larger powers and duties.

Enforcement of the laws.

The most comprehensive power is given in these words: "He shall take care that the laws be faithfully executed." This is the central idea of the office. An executive is one who executes or carries into effect. And in a Republic—a Government by the people, through laws appropriately passed—the thing to be executed is the law, not the will of the ruler as in despotic governments. The President cannot go beyond the law, and he cannot stop short of it. His duty and his oath of office take it all in and leave him no discretion, save as to the means to be employed. Laws do not execute

themselves. Somebody must look after them. It is the duty of the President to see that every law passed by Congress is executed. These relate to a multitude of things—the postal service, the internal revenue and a hundred other things. To enable him to do this, provision is made for the appointment of a large number of subordinate executive officers. At the head of these are the eight Cabinet officers: the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Attorney-General, the Postmaster-General, the Secretary of the Navy, the Secretary of the Interior, and the Secretary of Agriculture; and under them an army of subordinates, the number now being about 178,000, not including those in the military and naval service. Of these about 84,000 are in the classified civil service—that is, they are appointed after examination under the Civil Service Law and without regard to political influence.

His assistants.

The appointing power is expressed in these words: "He shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established

Appointing power.

by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the Courts of Law, or in the heads of departments." Under this provision the appointment of a large number of subordinate officials has been vested in the heads of departments.

Nominations — Senate action.

The process in Presidential appointments is for him to send to the Senate the names of the persons he has selected for particular offices. These nominations are public. A list of them for the press usually accompanies the official communication to the Senate. In the Senate action upon the nominations is taken in what is called executive or secret session. The nominations are first referred to the appropriate committees—postmasters to the Committee on Post-Offices and Post Roads, ambassadors and ministers to the Committee on Foreign Affairs, etc. Here the scrutiny generally consists in referring the nominations to particular committee members, who usually inquire of the Senator or Senators from the State from which the nominee comes whether there are any objections. If any representations are received by the committee against the fitness or character of the nominee he is advised of the nature of the charges, and given an opportunity to make his defence, but the name

of the person presenting the charges is usually withheld. If on a vote in the Senate a nomination is rejected the President is notified and the appointment fails. If the nomination is confirmed the President, on notice of the fact, issues to the officer a commission duly signed and sealed.

In the consideration of nominations for office the committees of the Senate have been for many years in the habit of sending to the Departments for the papers filed there in connection with the case, and these requests have generally been complied with. They seem to have had their origin in a suggestion from the Executive. In August, 1789, a nomination made by President Washington having been rejected by the Senate, he said, in sending in the name of another person: "Permit me to submit to your consideration whether on occasions where the propriety of nominations appears questionable to you it would not be expedient to communicate that circumstance to me, and thereby avail yourselves of the information which led me to make them, and which I would with pleasure lay before you."

Right of Senate to have papers.

The protracted and heated controversy between President Cleveland and the Senate during his first term, as to the right of the Senate to call upon the Departments for the papers relating to the suspension of an officer

Controversy with President Cleveland.

under the Tenure of Office Act, as well as for those relating to the appointment of the person nominated to fill the place of the suspended officer, can only be briefly mentioned. On behalf of the President it was contended that his power of removal was absolute and not in any way subject to the consent of the Senate; that the Senate had no right to call for papers relating to a subject as to which it could take no action, and that the papers relating to suspensions were not official but were private papers, which the President might destroy if he pleased. On behalf of the Senate it was contended that the power of removal was not involved; that the suspensions and the appointments under consideration were made under the Tenure of Office Act, and were expressly referred, by the President in the nomination messages, to that law; that under that law the removal of an officer was subject to the approval of the Senate; that such officer would resume his office, if the Senate took no action, at the end of the session; that the removal of an officer and the appointment of a successor were connected subjects, to be considered together; that the right of the Houses of Congress to be informed as to the acts of the Executive Department could not be limited as claimed; and, finally, that the particular resolution called for papers relating to the management of his office by the officer sus-

pended, which was a proper subject of inquiry, even if there had been no suspension—or if a successor had already been confirmed. The particular injustice complained of by the Republicans was the removal of public officers upon charges, and the denial of the requests of such officers to be advised as to the nature of the charges. The Tenure of Office law was passed in 1867, during the heated controversy between President Johnson and the Congress; and the constitutionality of the law was denied by many able lawyers. It prohibited the removal of any officer during his term without the advice and consent of the Senate, but gave the President power to suspend until the end of the next session of the Senate. The law was repealed in 1887.

Tenure of Office law.

The Constitution provides that the President may "fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session." There are a great many such appointments made, and the commissions all run, in the language of the Constitution, until the expiration of the next session of the Senate. When the Senate meets all of these vacation appointments are sent in for confirmation. If they are confirmed, new commissions, for the full legal terms of the offices, are issued. If they are rejected, new

Vacation Appointments.

nominations should be made, and if, as sometimes happens, the Senate adjourns without taking any action, the vacation appointment expires by its own limitation and must be renewed or another made. The power of removal has been generally regarded as an incident of the power of appointment, and as necessary to enable the President to fulfil his duty to see the laws executed; but during the sessions of the Senate he cannot put any person into an office until the nomination is confirmed. Of course, the power of removal does not extend to such officers as judges, who are appointed for life and are only removable on impeachment.

The Cabinet Officers.

The sphere of the Cabinet officers is evident from the descriptive titles they bear. Their Departments were constituted under the Constitution in the following order: The Department of Foreign Affairs, organized July 27, 1789, was permanently established as the State Department by the Act of Congress passed September 15, 1789. The Treasury Department was constituted September 2, 1789; the War Department, August 7, 1789; the Post-Office Department, temporarily, September 22, 1789, permanently, May 8, 1794; the office of Attorney-General, September 24, 1789 (The Department of Justice, as such, was organized June 22, 1870); the Navy Department, April 30, 1798; the Interior Department, March 3, 1849;

the Department of Agriculture, February 9, 1889. All of these officers are selected and nominated by the President and confirmed by the Senate. It is the first important act of the Administration. They constitute what is called his official family, and their relations with him are very close and confidential. Each of them has charge of a part of the public business defined by law.

In all important matters the President is consulted by all the Secretaries. He is responsible for all executive action, and almost everything that is out of the routine receives some attention from him. Every important foreign complication is discussed with him, and the diplomatic note receives his approval. The same thing is true of each of the departments. Routine matters proceed without the knowledge or interference of the President; but, if any matter of major importance arises the Secretary presents it for the consideration and advice of the President. Only matters of importance affecting the general policy of the administration are discussed in the Cabinet meetings—according to my experience—and votes are of rare occurrence. Any Secretary desiring to have an expression upon any question in his department presents it, and it is discussed; but usually questions are settled in a conference between the President and the head of the particu-

Relation to President.

lar department. If there is that respect and confidence that should prevail between a President and his Cabinet officers this consultation is on equal terms, and the conclusion is one that both support. There should be no question of making a "mere clerk" of the Cabinet officer; there is a yielding of views, now on one side, now on the other; but it must, of course, follow that when the President has views that he feels he cannot yield, those views must prevail, for the responsibility is his, both in a Constitutional and popular sense. The Cabinet officer is a valued adviser, and it does not often happen that his views and those of the President cannot be reconciled. Professor Burgess says:

Not a ministry.

In the exercise of his powers the President may ask the advice, if he will, of the heads of the Executive Departments, but he is not required to do so by the Constitution. The words of the Constitution are that the President "may require the opinion, in writing, of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices." . . . What we call the Cabinet is, therefore, a purely voluntary, extra-legal association of the Heads of the Executive Departments with the President, which may be dispensed with at any moment by the President, and whose resolutions do not legally bind the President in the slightest degree. They form a privy council, but not a ministry.[1]

[1] Political Science and Constitutional Law, 262-263.

The habit is to give an afternoon to each Cabinet officer on a fixed day of the week. These meetings are mainly given up to the consideration of appointments, but if any other matters are pending, and deemed by the Secretary of sufficient importance, they are presented and discussed. The Cabinet officer is chiefly entitled to the credit if his department is well administered, for most things he transacts on his own responsibility. His labors are incessant and full of care. His time is largely taken up by callers, and, like the President, he must, out of such fragments of time as he can secure, manage to study and decide the important questions that are daily presented to him.

Consultations.

Certain appointments, chiefly of a clerical character, are by law given to the heads of the departments, and with these the President usually refuses to interfere, though often urged to do so; but he spends many a weary hour explaining to friends why he cannot do so.

The Presidential appointments in each department are the subjects of consultation. All papers sent to the President, relating to such appointments, are referred to the proper department, and there a brief is made up, showing the names of the different applicants and the persons by whom they are recommended. It

Appointments—Congressional influence.

has come to be a custom that, in the appointment of officers whose duties relate wholly to a Congressional district, or some part of it, the advice of the Congressman—if he is of the President's party—is accepted. This is a mere matter of custom, but it has become so settled a custom that the President finds himself in not a little trouble if he departs from it. In the Congressional districts represented by Congressmen of the party opposed to the President the custom is that the Senator or Senators—if of the President's party—make the recommendations for the local appointments; as they also do for appointments in their States not of a local character. These recommendations are followed as a rule, unless something against the character or fitness of the applicant is alleged. In such case the President exercises his prerogative to make a selection of his own upon such other representations and recommendations as are made to him.

Senatorial courtesy.

When he does this the confirmation of the appointment, however good and unexceptionable in itself, is often held up in the Senate upon the objection of the Senator whose recommendation has not been followed, and the nomination is sometimes rejected—not upon the merits, but out of "Senatorial courtesy." The power and duty

of selection are vested by the Constitution in the President, but appointments are made "by and with the advice and consent of the Senate." It would seem that the power vested in the Senate relates only to the competency, fitness, and character of the person appointed, but this view is much varied in practice. Some Senators practically assert the right to select as well as to consent.

There can be no doubt that the participation of the Senate in the matter of appointments is larger than the Constitution contemplates. But as the President can, in the nature of things, know but little about the applicants for local offices, and must depend upon some one better informed than he to give him the necessary information, it is quite natural that he should give great weight to the advice of the Senator or Representative. It ought, however, to be admitted that as the responsibility rests upon the President he must be satisfied as to the fitness of the appointment. That being satisfactorily established, the public interests are saved, for the choice between fit men is not very important. If there is any objection to the appointment, growing out of the character or habits of the applicant, it is pretty sure to be brought out; and on the whole, considering the number of appointments the President is required to make without any personal

knowledge of the appointees, the public service is well and honestly conducted.

The office-seekers.

At the beginning of every administration Washington fills up with persons who desire some office either in the States, in the departments, or in the foreign service. Many of these persons have a very limited purse, and as the days pass on this is exhausted, and impatience and ill-temper come in. Many of them are deserving and well-fitted to fill the offices they seek. But it is impossible to find places for all the deserving, and the position of the President is full of trial. The suspense that the office-seeker suffers is illustrated by the case of a man who thought he had good reason to expect an appointment from President Garfield. After he had been weeks at Washington, and had brought to bear all the influence he could command, a friend met him one day on the street and asked him how he was getting along. His answer was, "Very well, very well, but there is nothing focal yet." The answer was wonderfully expressive, and a good illustration of the state of uncertainty which accompanies office-seeking. "Nothing focal yet," but a hope that is hard to kill.

There are few, if any, offices at Washington the salaries of which enable the incumbent to save any money, and the average experience of those holding

places in the departments is, if they would express it, that private business offers better returns and gives a better chance for advancement. The civil service law has given a measure of security to the department clerk, but even with this protection there is a sense of insecurity and dependence which is not found in private pursuits. But for many persons there is a fascination about the National Capital, and a zest and excitement in life there that will continue to attract many a young man who could make a much greater career at home.

Civil Service.

The Civil Service Law has removed a large number of minor offices in the departments at Washington, and in the postal and other services, from the scramble of politics, and has given the President, the Cabinet officers and the Members of Congress great relief; but it still remains true that in the power of appointment to office the President finds the most exacting, unrelenting, and distracting of his duties. In the nature of things he begins to make enemies from the start, and has no way of escape—it is fate; and to a sensitive man involves much distress of mind. His only support is in the good opinion of those who chiefly care that the public business shall be well done, and are not disturbed by the consideration whether this man or that man is doing it; but he hears very little directly from this class.

No President can conduct a successful administration without the support of Congress, and this matter of appointments, do what he will, often weakens that support. It is for him always a sort of compromise between his ideal and the best attainable thing.

CHAPTER VII

THE PRESIDENT (CONTINUED)

ENFORCEMENT OF LAWS — PEACE OF THE UNITED STATES — ASSAULT ON JUSTICE FIELD — RAILROAD STRIKES — ALIENS — USE OF ARMY.

A FEW words more about the laws and the enforcement of them. The execution of the laws usually proceeds along moral and peaceful lines, for people generally neither violate the laws nor resist public officers. But provision must be made for the arrest and punishment of those who do, and for the prompt suppression of any organized resistance, in the form of insurrections, mobs or otherwise. All punishment must be by the judgment of a Court. The Executive Department can only suppress violence, and arrest the law-breakers—the trial of the question of guilt and the fixing of the penalty within the statutory limits, is for the Courts. The United States Marshals and their deputies are the peace officers of the United States. They usually act upon warrants or other orders from the United States Courts; but they may act in some cases without a writ from the Court. The attempt

Enforcement of the laws — United States marshals.

upon the life of the honored and venerable Justice Field, of the Supreme Court, by David S. Terry, is an example. Justice Field had tried a case in which Terry was interested, and for his judicial action in that case Terry had made threats against the life of the Justice. The Attorney-General (Mr. Miller) directed the United States Marshal for the Northern District of California to afford the Justice protection, and Deputy Marshal Neagle was detailed to that duty. While the Justice was on his way from Los Angeles, where he had held Court, to San Francisco, where he was again to sit in the Circuit Court, Terry made an assault upon him at a railroad eating-house, and was killed by Deputy Marshal Neagle. Some interesting questions arose: If the peace had been broken, was it the peace of the United States or the peace of the State of California? Could the police of the State arrest and hold the Deputy Marshal, and the courts of the State try and punish him, or was the question whether the officer had committed a crime one to be determined by the laws and the courts of the United States? The State officers arrested Neagle, and a State court indicted him. He was taken on a writ of habeas corpus, issued by the United States Circuit Court, from the State officers, and brought before that Court and dis-

Assault on Justice Field.

charged. Some important and instructive things were said in the decision given in the case by the Supreme Court.[1]

The Attorney-General (Mr. Miller), in his brief, said:

Argument certainly cannot be necessary to show the duty of the Executive Department of the Government of the United States to protect the Courts and Judges in the discharge of their duties. Indeed, it is hardly supposed that this will be questioned. The President, as the head of that Executive Department, is under the Constitutional obligation to take care that the laws be faithfully executed. To the end that he may, in every contingency, discharge this duty he is made Commander-in-Chief of the Army and Navy, and of the militia of the several States when called into active service.

President may use Army and Navy.

Justice Miller, in the opinion of the Court, quotes from the opinion of Justice Bradley in *Ex parte* Siebold, 100 U. S., as follows:

We hold it to be an incontrovertible principle that the Government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent. This power to enforce its laws and to execute its functions in all

[1] 135 U. S., p. 1.

places does not derogate from the power of the State to execute its laws at the same time and in the same places. The one does not exclude the other, except where both cannot be executed at the same time. In that case the words of the Constitution itself show which is to yield. "This Constitution, and all laws which shall be made in pursuance thereof, . . . shall be the supreme law of the land." . . . Without the concurrent sovereignty referred to, the National Government would be nothing but an advisory Government. Its executive power would be absolutely nullified. Why do we have marshals at all, if they cannot physically lay their hands on persons and things in the performance of their proper duties? What functions can they perform if they cannot use force? In executing the processes of the Courts, must they call on the nearest constable for protection? Must they rely on him to use the requisite compulsion, and to keep the peace, whilst they are soliciting and entreating the parties and bystanders to allow the law to take its course? This is the necessary consequence of the positions that are assumed. If we indulge in such impracticable views as these, and keep on refining and re-refining, we shall drive the National Government out of the United States, and relegate it to the District of Columbia, or perhaps to some foreign soil. We shall bring it back to a condition of greater helplessness than that of the old confederation. . . . It must execute its powers, or it is no Government. It must execute them on the land as well as on the sea, on things as well as on persons. And, to do this, it must necessarily have power to command obedience, preserve order, and keep the peace; and no person nor

United States not an advisory Government.

power in this land has the right to resist or question its authority so long as it keeps within the bounds of its jurisdiction.

Justice Miller then says:

Is this duty limited to the enforcement of acts of Congress or of treaties of the United States according to their *express terms*, or does it include the rights, duties, and obligations growing out of the Constitution itself, our international relations, and all the protection implied by the nature of the Government under the Constitution?

. . . . . .

So if the President or the Postmaster-General is advised that the mails of the United States, possibly carrying treasure, are liable to be robbed and the mail-carriers assaulted and murdered in any particular region of country, who can doubt the authority of the President or of one of the Executive Departments under him to make an order for the protection of the mail and of the persons and lives of its carriers, by doing exactly what was done in the case of Mr. Justice Field, namely, providing a sufficient guard, whether it be by soldiers of the army or by Marshals of the United States, with a *posse comitatus* properly armed and equipped, to secure the safe performance of the duty of carrying the mail wherever it may be intended to go?

. . . . . .

And again:

That there is a peace of the United States; that a man assaulting a Judge of the United States while in the

discharge of his duties violates that peace; that in such case the Marshal of the United States stands in the same relation to the peace of the United States which the sheriff of the county does to the peace of the State of California, are questions too clear to need argument to prove them.

There is a peace of the United States.

The Court held that Justice Field, while travelling to the places where he was to discharge judicial duties, was as fully entitled to the protection of the United States as while actually sitting upon the bench.

The laws that the President must enforce are, of course, only the laws of the United States. With the matter of resistance to the laws of a State he has nothing to do, save as will be presently explained. But the power and duty of the President to suppress mob violence happening in the States is broader than the old thought and practice in such matters. During the great railroad strike of 1877 the United States troops were not used in any case except where the Governor or Legislature of the State called upon the President for aid, under Section 4 of Article 4 of the Constitution, which declares that the United States shall protect the States against invasion; and, "on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic

Railroad strike of 1877.

violence"; and except, also, to support the United States Marshals in making arrests on process from the United States Courts. At some points during the strike of 1877 the strikers thought to evade the interference of the President and of the United States Courts by permitting mail-cars to be run, while cutting off all freight and passenger traffic. The question whether the stoppage of passenger and freight traffic between the States was not an offense against the United States was not much considered, if at all. In some cases where particular railroads were in the hands of receivers appointed by the United States Courts, interference with the running of trains on such roads was treated as a contempt of the Court, and some persons were arrested and punished as for contempt.

Highways of interstate commerce and the mails.

Subsequently a broader view was taken of the powers of the United States Courts and of the President, and a jurisdiction was exercised by each that had not before in like cases been exercised, but was clearly within the scope of their Constitutional powers. It was held that a mail-train was composed not only of postal-cars, but of such other cars as were usually drawn with the postal-cars in the train; that the railroad companies could not be required to run mail-cars, when prevented

by violence from hauling with them other coaches assigned to the train; and that any cutting out of cars from a mail-train was an interference with the transportation of the United States mails. It was also held that the stoppage of trains—freight or passenger—running from one State into another—that is, conducting interstate commerce—or the tearing up of or obstructing the tracks over which such interstate commerce was carried, was an offense against the peace of the United States. Such an offense may be enjoined by the Courts, and the Army of the United States may be used by the President to restore order, without waiting for any call from the State Legislature or the Governor for assistance. It is not "domestic violence," in the sense of the section just quoted, but an attack upon the powers of the National Government, and neither the request nor the consent of the State is needed to give the President a right to use the means placed in his hands by the Constitution, to preserve the peace of the United States, and to see that the mails and interstate commerce are neither stopped nor impeded by violence. A strike of violence affecting a street railway in a city, or a shop or factory or coal mine, or other local interest, or a riot raised for the lynching of a prisoner charged with an offence against the State—all these must be dealt with by

State call for aid. Domestic violence.

the State authorities, save that, as has been seen, the President may be called upon for aid by the Legislature or Governor.

There is a class of persons residing in the States to whom the direct protection of the United States is due, though no proper legislation has yet been passed to make it effective. These are citizens of foreign countries who, under the treaties we have with such countries, are domiciled in the States, and to whom such treaties guarantee the protection of the law. As yet Congress has not legislated to give the United States Courts jurisdiction of prosecutions for offences against such persons, in derogation of their treaty rights. The killing of some Italian subjects in New Orleans, in March, 1891, and the demand of the Italian Government for the punishment of the offenders, and for an indemnity, brought this strange and unsatisfactory condition of things very strongly to the attention of our Government. The United States had made a treaty with Italy giving certain rights to the subjects of that kingdom living in this country. Yet, when the demand was made upon the United States that the offenders should be tried and punished, we could only say, We are powerless; we have left that to the State authorities and can only suggest that proceedings be taken by them. This

Rights of aliens —New Orleans lynchings.

was manifestly unsatisfactory. The United States made the treaty. Italy could not make a treaty with Louisiana, nor demand an indemnity of her.

In a message to Congress the President said:

The lynching at New Orleans in March last of eleven men of Italian nativity by a mob of citizens was a most deplorable and discreditable incident. It did not, however, have its origin in any general animosity to the Italian people, nor in any disrespect to the Government of Italy with which our relations were of the most friendly character. The fury of the mob was directed against these men as the supposed participants or accessories in the murder of a city officer. I do not allude to this as mitigating in any degree this offence against law and humanity, but only as affecting the international questions which grew out of it. It was at once represented by the Italian Minister that several of those whose lives had been taken by the mob were Italian subjects, and a demand was made for the punishment of the participants, and for an indemnity to the families of those who were killed. . . .

The views of this Government as to its obligations to foreigners domiciled here were fully stated in the correspondence, as well as its purpose to make an investigation of the affair, with a view to determine whether there were present any circumstances that could, under such rules of duty as had been indicated, create an obligation upon the United States.

The President further said:

Some suggestions growing out of this unhappy incident are worthy the attention of Congress. It would, I believe, be entirely competent for Congress to make offences against the treaty rights of foreigners domiciled in the United States cognizable in the Federal Courts. This has not, however, been done. . . . It seems to me to follow, in this state of the law, that the officers of the State charged with police and judicial powers in such cases must, in the consideration of international questions growing out of such incidents, be regarded in such sense as Federal agents as to make this Government answerable for their acts in cases where it would be answerable if the United States had used its Constitutional power to define and punish crimes against treaty rights.

Like incidents have frequently occurred and will occur again, and Congress should so legislate as to give the United States Courts appropriate powers to protect those who are here in the "peace of the United States."

We have often heard it said that the United States protects Americans domiciled in a foreign country from injury, sending fleets to enforce our demands, but that it fails to give protection to our citizens at home, against unjust or oppressive laws, or the unlawful and violent destruction of their property or lives, or the denial of their political rights. The statement has

Protection of citizens against violence.

a good deal of truth in it. But the explanation is that in the one case the Constitution and laws have given the power to the President to act; and, in the other, have in a large measure, left to the States the control of elections and the duty to protect citizens from injuries to their persons or property.

The Constitution declares that "the President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States." Undoubtedly he might assume the command in person—take the field and conduct military operations—but he has never done so and is not likely to do so. The other duties laid upon him make it practically impossible that he should do so, at least for any length of time. But he does command through others, and his order to any commanding officer is imperative. Mr. Lincoln followed the movements of our armies during the Civil War very closely, and often expressed, with rare good judgment, to the commanding officer, views as to the proper use of his troops; but he did this in a suggestive rather than an imperative form.

President is Commander-in-Chief.

Justice Miller, in his lectures on the Constitution, says:

How far President Lincoln actually interposed his own will and his own judgment in the conduct of this war will perhaps never be fully known, though it is well understood that on many important occasions, and in great emergencies, he enforced his judgment in many ways; mainly, however, in displacing commanders of large armies and appointing others, until success established his own confidence and the confidence of the public in a few great military leaders.[1]

Congress must declare war.

The President cannot declare war. Congress must do that. But that the provision of the Constitution making him Commander-in-Chief was intended to confer upon the President the power to use military force in executing the laws, and in protecting the property of the United States and its officers in the discharge of their duties, there can be no doubt. It would not be appropriate here to discuss the various limitations that Congress has imposed, or attempted to impose, upon the power of the President to use the army in enforcing the laws. The people are very properly jealous of the interference of the military in civil affairs, and will justify it only in cases of obvious necessity. This consideration, and the liability to impeachment for any improper use of his powers, will always make the use of the army, by the President, to keep the peace, a matter of last resort.

[1] Miller on the Constitution, p. 164.

CHAPTER VIII

THE PRESIDENT (CONTINUED)

HOW BILLS ARE DEALT WITH—THE VETO—APPROVAL OF BILLS—"POCKET VETO"—"RIDERS"—THEORY OF THE VETO—PRACTICE—THE TREATY-MAKING POWER—ACTION IN SENATE—PARTICIPATION OF THE HOUSE—ABROGATION.

The veto power.

THE President, by the power of the veto, becomes a very large factor in determining whether a bill shall become a law. Section 7 of Article 1 contains the grant of this power, and reads, in part, as follows:

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each

House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Discussion in Convention.

There was much discussion in the Constitutional Convention upon the subject of the veto. Some thought an absolute veto necessary to enable the Executive department to preserve its constitutional powers against the encroachments of the Legislative department; some thought the justices should be associated with the President in the use of the veto power; and others were opposed to any Executive check upon the powers of the Legislature. Dr. Franklin contributed to the discussion this remarkable statement:

He had had some experience of this check in the Executive on the Legislature, under the Proprietary Government of Pennsylvania. The negative of the Governor was constantly made use of to extort money. No good law whatever could be passed without a private bargain with him. An increase of his salary, or some donation, was always made a condition; till at last it became the regular practice to have orders in his favor, on the Treasury, presented along with the bills to be signed, so that he might actually receive the former before he should sign the latter.[1]

[1] Elliot's Debates, vol. 5, p. 152.

When a bill has passed both Houses of Congress and has been signed by the President of the Senate and the Speaker of the House, it is taken, by the clerk of the Committee on Enrolled Bills, to the Executive Mansion, where the date of its delivery is stamped upon it. The practice is then to send the bill to the head of the department to which its subject-matter belongs—to the War Department, if to army matters; to the Interior, if to pensions, or public lands, or Indian affairs, etc.—for the examination of the Secretary, and for a report from him as to any objections that may occur to him. As to the frame of the bill, and as to any Constitutional questions involved, the Attorney-General is often consulted, though the bill does not relate to his department. The President then takes up the bill, with the report from the department, and examines it, and if he approves writes thereon "Approved," giving the date, and signs his name. The bill, now become a law, is then sent to the State Department to be filed and published in the Statutes-at-Large.

How the President deals with bills.

If the President finds such objections to the bill as to prevent him from giving it his approval two courses are open to him. He may, at any time within ten days (Sundays not counted) from the time it was brought to him, return the bill to the Senate or to the House—according as the bill was

first passed by the one or the other—with a message stating his objections to it; or he may suffer the bill to lie upon his table, taking no action whatever upon it. If he takes no action then the fate of the bill turns upon whether Congress remains in session during the ten days—and by this is not meant that both Houses shall be in session every legislative day of the ten. If it does the bill becomes a law; if it does not, the bill fails—does not become a law. In the Statutes-at-Large of the United States many laws are found which do not have the President's signature. These are usually acts of small moment—relief bills or such like, which he could not approve, but did not deem of sufficient moment to be the subject of a veto message.

But, now and then, laws of a general nature and of the highest importance appear without the President's signature. Mr. Cleveland allowed the Tariff Bill of August, 1894 (known as the Wilson Bill), to become a law without his signature. If Congress adjourns before the expiration of the ten days given to the President for the consideration of a bill, and he does not sign it, but retains it without action, it fails, as has been said. This is called a "pocket veto." The "pocket veto."

It will be seen, therefore, that as to bills presented to the President during the last ten days of

a session of Congress his veto is an absolute, not a qualified, one. He has only to do nothing, and the bill fails. The object clearly was to secure to the President proper time for the examination of all bills. If a flood of bills could be thrown upon him in the last ten days of the session, thus depriving him of a proper time for examining them, and they were to become laws unless he stated his objections in veto messages, it would practically abrogate, as to many bills, the veto power. In fact, just such a flood of bills is usually passed, many in the very last hours of the session, when the attendance in the Houses is small, the members wearied by night sessions, and many of the leading members absent from their seats, serving on conference committees. Every interval in the consideration of the appropriation bills is eagerly watched for and utilized by members who have some personal relief bill or some bill of a local character that they want to get through. This hasty legislation needs especial scrutiny, and it is well that when he is in doubt, and has no time to investigate, the President can use the "pocket veto." It sometimes happens that an important appropriation bill is passed in the very last moments of the session, and, indeed, by the true time, after the session is ended—for the hands of the clocks in the chambers are sometimes

A flood of bills.

turned back to gain a few moments to complete the passage of a bill. The President, in recent times, generally goes to his reception-room in the Senate wing of the Capitol in the last hours of the session, especially if some of the appropriation bills are not yet disposed of, in order to save the time that would otherwise be necessary to carry the bills to the Executive Mansion.

A Constitutional Amendment forbidding Congress to pass any laws in the last twenty-four hours of a session, save such as might have been returned with a veto, was suggested by President Grant. The object of this suggestion was "to give the Executive an opportunity to examine and approve or disapprove bills understandingly." But it would be no remedy for hasty legislation; for the last day would then, as an Irishman might say, "be the day before the last," and the same rush and hurry would characterize it.

Riders on appropriation bills.

There is another practice in legislation that greatly restrains the freedom of the President in using the veto power. What are called "riders" are often placed on general appropriation bills—that is, legislation of a general character, having nothing to do with appropriations, is put into an appropriation bill. This is equivalent to saying to the President, "Give your approval to this general legislation or go without the

appropriations necessary to carry on the government." President Hayes resisted attempts by this method to impair the Constitutional powers of the Executive, and vetoed five appropriation bills because general legislation had been incorporated to which he could not give his assent.

Other restraints.

There are other practical restraints upon the freedom of the President in the exercise of the veto power. Very many laws contain more than one proposition—some a number of such—and the President must deal with them as thus associated. In each of the great appropriation bills many hundreds of distinct appropriations are made. Some of these the President may think to be wrong, either as matter of policy, or of Constitutional power; but he cannot single these out; he must deal with the bill as a whole. In some of the State Constitutions the Governor is given power to veto any item in an appropriation bill.

Theories of the veto—Practice.

It has been much contended that the veto was given to enable the President to defeat legislative attempts to encroach upon his Constitutional powers, and to protect those of the Judiciary; and that he should use the veto only where he finds Constitutional objections to a bill. But the power is not so limited, and from the beginning has been exercised upon the ground of the inexpediency or unwisdom of the

legislation proposed, as well as upon Constitutional grounds. The President, however, does not deal with bills submitted for his approval upon the principle that he should approve only such as he would have voted for if he had been a member of Congress. Much deference is due to the Congress, and vetoes have customarily been used only when the fault in the proposed legislation was serious in itself, or as a precedent. Washington used the veto but twice; once for Constitutional objections, and once for reasons affecting only the wisdom and expediency of the bill.

Mr. Edward Campbell Mason, in his monograph upon the veto power, says:

> The veto is but an appeal to the sober second thought of the nation, and when that second thought is like the first the appeal can accomplish nothing. This seeming weakness in the veto is not a defect. The theory of our Government is that in the long run the people are right. The veto would be a hindrance if it could permanently check the strong underlying tendencies in the public mind. And in any case, in a Government founded on nearly universal suffrage, a positive check to popular measures is not what is wanted. The most that can safely be done is to hinder the enactment of propositions until the people can determine whether they are really in earnest in their demands; and this delay the veto power is most admirably constructed to accomplish.[1]

Appeal to second thought.

[1] Mason: The Veto Power, p. 134.

When a bill is returned by the President to the House in which it originated, the veto message is read, and the question is put: "Shall the bill pass, the objections of the President to the contrary notwithstanding?" The vote must be taken by yeas and nays, and entered on the journals. The object of this is that the public may know just how each member has voted, and that the record shall show whether or not two-thirds of the members have voted for the passage of the bill. If two-thirds of each House of Congress are recorded in the affirmative the bill becomes a law. This does not mean two-thirds of all the members of each House, but two-thirds of those present and voting—a quorum being present.

Action on the veto.

The treaty-making power is given to the President (in connection with the Senate) by the second paragraph of Section 2 of Article 2 of the Constitution, in these words:

Treaty-making power.

> He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.

It will be noticed that the initiative—the negotiations with foreign Governments leading up to an agreement—and the framing of the articles of the treaty, are with the President. The Senate has no part in the matter until the President com-

municates the treaty to it, and asks its concurrence. It may then, however, either concur or reject, or concur with amendments. The high sanction and dignity of treaties is thus declared in Article 6 of the Constitution:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Denied to States.

The power to make treaties is explicitly denied to the States by Section 10 of Article 1 of the Constitution: "No State shall enter into any treaty, alliance, or confederation." And the third clause of the same section declares that "no State shall, without the consent of Congress, . . . enter into any agreement or compact with another State, or with a foreign power."

Action in Senate.

When the Executive has agreed with any foreign power upon a treaty, and it has been duly signed by the Plenipotentiaries for their respective Governments, it is sent to the Senate for its concurrence, and is considered there in secret session. Whatever may be said as to the wisdom or necessity of secret sessions for

other purposes it is manifestly often necessary that treaties, and the discussion of them, be kept in the confidence of those charged with concluding them, until they are concluded.

Plans in Convention.

There was much debate in the Constitutional Convention upon the section relating to the treaty-making power. Mr. Randolph's plan gave to the President, with the advice and approbation of the Senate, the power of making all treaties. Mr. Pinckney's plan gave to the Senate "the sole and exclusive power to declare war, and to make treaties." The Committee of Detail recommended that "the Senate of the United States shall have power to make treaties, and to appoint ambassadors," etc. At a later day Mr. Madison proposed that the Senate should have power to conclude treaties of peace without the concurrence of the President. This proposition went upon the theory that the President might, by reason of the increased power and influence that a state of war gave him, be inclined to prolong a war unduly.

Participation of the House.

Nor was the objection that the House of Representatives was excluded from any participation in the making of treaties overlooked. Mr. Mason said, while the proposition stood to lodge the treaty-making power in the Senate, that that body "could already sell the

whole country by means of treaties"; and again that the power might be used to "dismember the Union." Mr. Morris proposed that no treaty should be binding unless ratified by law, that is, by both Houses. Mr. Wilson said a treaty might be made "requiring all the rice of South Carolina to be sent to one particular port." When the clause was reported by a committee, in about the form finally agreed upon, Mr. Wilson moved to insert after the word "Senate" the words "and House of Representatives," and said that "as treaties are to have the operation of laws, they ought to have the sanction of law also"—meaning that the House should concur with the President and Senate in the making of a treaty, as in the making of a law.

But, though the attempts in the Convention to give the House of Representatives a direct part in the making of treaties failed, it is still true that many important treaty stipulations depend for their execution upon the action of the House. If a treaty stipulates for the payment of money by the United States, the money cannot be taken from the Treasury without an appropriation. It may be said that as a treaty is a part of the "supreme law of the land," it is the duty of Congress to appropriate the money necessary to carry it into effect; and that in the

Its practical power.

making of the appropriation the House has no right to consider the question of the value or propriety of the treaty. But, all the same, if the appropriation is not made the treaty fails. This question has several times been discussed in conference between the Senate and the House, as also the further question whether commercial treaties which modified our revenue laws required legislation to give them effect. In 1816 the Senate passed an act relating to a commercial treaty with England. It was in substance a declaration that any existing laws in conflict with the treaty should be held to be of no effect—upon the theory that the treaty being the later expression, and the "supreme law of the land," took effect without a repeal of the conflicting laws, and that only a declaration of the fact was necessary. The House took the view that legislation adapting the laws to the treaty was necessary. The conferrees on the part of the House reported:

> Your committee understood the committee of the Senate to admit the principle contended for by the House, that whilst some treaties might not require, others may require legislative provision to carry them into effect; that the decision of the question how far such provision was necessary must be founded upon the peculiar character of the treaty itself. [1]

[1] Introductory note, Treaties and Conventions of the United States with other Powers, original edition, p. 944.

So in the case of the treaty with Russia for the purchase of Alaska the House adopted a resolution that "the stipulations of the treaty cannot be carried into full force and effect, except by legislation to which the consent of both Houses is necessary."[1]

In spite then of the provisions of the Constitution lodging the treaty-making power in the President and the Senate, and declaring that "all treaties made . . . under the authority of the United States shall be the supreme law of the land," we have come practically to recognize the fact that legislation is often necessary to give this part of the "supreme law of the land" any effect. Indeed, most treaties require appropriations for expenses or indemnities, or the like, and commercial treaties usually modify our revenue laws. If they do not of their own force repeal conflicting laws and carry the necessary appropriations, there must be legislation. Usually appropriations to carry out a treaty have been given freely by the House; but there is power to withhold them, and so to defeat the treaty. As to treaties involving our revenue laws, the House—having by the Constitution the sole power to originate revenue bills—has claimed the right to act upon a consideration of the wisdom or unwisdom of the treaty.

[1] Introductory note, Treaties and Conventions of the United States with other Powers, original edition, p. 944.

Many treaties contain a provision that either of the high contracting parties may, upon specified notice, declare them abrogated. When no such provision is inserted, and the obligations assumed are not limited as to time, the common impression, perhaps, is that there are only two events—the mutual consent of the parties, or a state of war—that can relieve a nation from its solemn treaty covenants. But it is not so, as to the United States, at least, for it has been held that an act of Congress, of later date than the treaty, may abrogate it.

Abrogated by later law.

The Supreme Court of the United States says (Justice Gray), in the Chinese Exclusion case (149 U. S., 720):

In our jurisprudence, it is well settled that the provisions of an act of Congress, passed in the exercise of its Constitutional authority, on this, as on any other subject, if clear and explicit, must be upheld by the Courts, even in contravention of express stipulations in an earlier treaty. As was said by this Court in Chae Chan Ping's case, following previous decisions: "The treaties were of no greater legal obligation than the act of Congress. By the Constitution, laws made in pursuance thereof and treaties made under the authority of the United States are both declared to be the supreme law of the land, and no paramount authority is given to one over the other. A treaty, it is true, is in its nature a contract between nations, and is often merely

promissory in its character, requiring legislation to carry its stipulations into effect. Such legislation will be open to future repeal or amendment. If the treaty operates by its own force, and relates to a subject within the power of Congress, it can be deemed in that particular only the equivalent of a legislative act, to be repealed or modified at the pleasure of Congress. In either case the last expression of the sovereign will must control." "So far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the Courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification or repeal."

Does not work both ways.

Under this view of the law two-thirds of the House and two-thirds of the Senate may, over the objections of the President, abrogate a treaty. The unlearned might conclude if, as the Supreme Court says, a treaty and a law are of equal force, and the law overrules the treaty, because it is a later expression of the sovereign will that a treaty later in time than the law would override the latter. But things do not always work both ways, and the probability is that this is one of those that do not. For the Court has held that a law abrogates an earlier treaty, and Congress has apparently settled the principle that a treaty does not annul an earlier law.

CHAPTER IX

THE PRESIDENT (CONTINUED)

THE PARDONING POWER—AMNESTY—MR. LINCOLN'S VIEW—ATTEMPT TO EXCEPT TREASON — REPRIEVE — COMMUTATION—IMPEACHMENT—THE PROCESS—THE PENALTY—A RARE PROCEEDING—SOME CASES—ANDREW JOHNSON.

The pardoning power.

THE pardoning power, one of the great executive powers, is conferred upon the President in these words: "And he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment."

A pardon may be granted before trial. Such a course is very unusual, however, in the case of an individual; but it is the usual method when large numbers of persons have become liable to criminal prosecutions for a common or for like offences, and the Executive desires to set them free from the penalties of the law. In such cases the pardon takes the form of a Proclamation of

Amnesty—conditions.

Amnesty, and describes, not individuals, but a class. Instances of this form of pardon are found in the proclamations granting amnesty to those who took part in the

rebellion, and to the Mormons for offences against the anti-polygamy laws. These pardons, as well as individual pardons, may be granted on conditions stated, and in such case are available only to those who comply with the conditions.

In 1862 Congress passed an act which purported to authorize the President to extend pardon and amnesty to persons who had participated in rebellion. In December, 1863, President Lincoln issued such a proclamation with conditions, and in his message to Congress he said, "The Constitution authorizes the Executive to grant or withhold pardon at his own absolute discretion;" and Chief Justice Chase speaks of the law as "the suggestion of pardon by Congress, for such it was, rather than authority." He further said: "To the Executive alone is entrusted the power of pardon; and it is granted without limit. Pardon includes amnesty. It blots out the offence, pardons and removes all of its penal consequences. It may be granted on conditions. . . . Now it is clear that the Legislature cannot change the effect of such a pardon any more than the Executive can change a law."[1]

Mr. Lincoln to Congress.

There was a strenuous effort in the Constitutional Convention to except cases of treason, as well as cases of impeachment, and the attempt

[1] U. S. *v.* Kline, 13 Wal., 147.

would not unlikely have succeeded but for the difficulty of agreeing as to where the power of pardon in such cases could be better lodged than in the Executive. The pardoning power proceeds upon the grounds that, by reason of the rigidity of the criminal code, of the liability to error of every human tribunal, and of the possible discovery of such errors, or of new evidence, after the courts have ceased to have any power over the case; or by reason of the existence of extenuating facts which the courts could not notice, or of evidence that a partial execution of the sentence has wrought out the full results of just punishment, there should be lodged in some officer or department the power to remit or mitigate a sentence. An old writer exclaimed, "Happy the nation in which pardons will be considered as dangerous." But a humane and reasonable government will always provide a reserve power that may be appealed to to mitigate undue penalties and to rescue those whose innocence has been disclosed. Montesquieu says: "In Persia, when the King has condemned a person, it is no longer lawful to mention his name or to intercede in his favor. Even if the Prince were intoxicated, or *non compos*, the decree must be executed."[1] The Supreme Court of the

Attempt to except treason.

Arguments for power of pardon.

[1] The Spirit of Laws, Book 3, chap. 10.

United States,[1] speaking of the pardoning power, says: "Without such a power of clemency, to be exercised by some department or functionary of a government, it would be most imperfect and deficient in its political morality."

Reprieve—an incident.

A reprieve is a temporary suspension of the execution of a sentence. This power is often used for the purpose of giving the President time to examine an application for a pardon, or to enable the condemned to furnish further evidence in support of such an application. One of our Presidents relates this incident:

"An application for a pardon in behalf of a man condemned to death for murder was presented to me, and after a careful examination the application was denied. On the day before the day fixed for the execution I arrived at the house of a friend on a visit, and found that just before my arrival a telegram had come asking for a reprieve for the condemned man. The message had been telephoned to the house of my host and received by his wife. Her sympathies, and those of the whole household, were at once enlisted for the poor fellow, and though the gibbet was over twelve hundred miles away the shadow of it was over the house, and I was the hangman. A telegram to the United States Marshal, granting a short reprieve,

[1] Ex parte Wells, 18 How., 310.

was sent, and the day of the execution was again my uncomfortable secret." It is not a pleasant thing to have the power of life and death. No graver or more oppressive responsibility can be laid upon a public officer. The power to pardon includes the power to commute a sentence, that is, to reduce it. When the sentence is death the President may commute it to imprisonment for life, or for any fixed term; and when the sentence is imprisonment for life, or for a fixed term of years, he may reduce the term, and if a fine is imposed he may reduce the amount, or remit it altogether.

Commutation of sentence.

The course of procedure in an application for a pardon is this: A petition is drawn and signed by the applicant setting forth the grounds of the application. This is usually accompanied by other petitions and letters from citizens urging clemency. The papers should go directly to the Attorney-General, and if sent to the President are referred to the Department of Justice without examination. The first step here is to refer the papers to the Judge and District Attorney who tried the case, for any statement or recommendation they may be inclined to make. In the Department of Justice there is a pardon clerk, to whose desk all papers relating to pardons primarily go. He classifies and makes a brief of

Applications for pardon—Proceedings.

them, and then forwards them to the Attorney-General, accompanied by a letter stating his view of the case. The Attorney-General then takes up the case, and after an examination indicates his recommendation on the jacket inclosing the papers, and sends them to the President. Here the case is decided, after a careful examination of every paper, especially when the sentence is a severe one. The conclusion of the President, "Pardon granted," or "Pardon refused," or "Sentence commuted to——," is endorsed upon the jacket. Sometimes the President states briefly the reasons upon which his conclusion is based. The papers are then returned to the Department of Justice, and the officer having the custody of the prisoner is notified of the conclusion reached. The pardon is prepared at the Department of State, as the Great Seal is there, and sent to the President for his signature.

There is an increasing amount of pardon business coming to the President's desk, and he often has many cases waiting his action. Offences against the postal laws, revenue laws and national banking laws make up the bulk of this business; but cases of murder from the Territories and the District of Columbia are quite frequent. The Indian Territory has been the abode of lawlessness, and crimes against hu-

Increasing number of. Capital cases.

man life have been very common there. Until recently crimes committed by or against white men in that Territory were triable mainly in the United States Court for the Western District of Arkansas, at Fort Smith, and Judge Parker, of that District, has probably sentenced as many men to death as all the other United States judges combined. The gibbet was never taken down.

The papers in these murder cases are usually voluminous—a full record or an abstract of the evidence making part. If the trial seems to have been fairly conducted, and no new exculpatory evidence is produced, and the sentence does not seem to have been unduly severe, the President refuses to interfere. He cannot weigh the evidence as well as the judge and jury. They saw and heard the witnesses, and he has only a writing before him. It happens sometimes that the wife or mother of the condemned man comes in person to plead for mercy, and there is no more trying ordeal than to hear her tearful and sobbing utterances, and to feel that a public duty requires that she be denied her prayer.

We have seen how the President gets into office, and we will now briefly look at the Constitutional process of putting him out of office. Section 4 of Article 2 of the Constitution provides that "The President, Vice-President,

Impeachment—Process.

and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." "The sole power of impeachment" is given to the House of Representatives, that is, the power to resolve that an officer shall be impeached for specified offenses, and to prefer the charges or articles of impeachment, which take the place of an indictment in an ordinary criminal trial. "The sole power to try all impeachments" is given to the Senate, and "When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present." The judgment, in case of conviction, ousts the officer from the office he is holding by an express provision of the Constitution. The Senate cannot mitigate or change that penalty, but it may or may not add the further penalty of a future disqualification to hold office under the United States. From the penalties imposed upon conviction by the court of impeachment the President cannot relieve by pardon. No imprisonment, or fine, can be imposed by the Senate; but the impeached officer is still liable to be indicted in the courts, and may there be made to suffer death,

Penalty.

imprisonment, or any other legal penalty for his crime. Whether the Senate can, upon its own motion, or upon the request of the House of Representatives, open a judgment of conviction upon impeachment, and set it aside, is an interesting but unsettled question, as is also the question of the liability to impeachment of a person who has by resignation retired from office.

Can new trial be granted?

The use of the process of impeachment has been, and is likely to continue to be, very rare. It is the most cumbrous of all judicial proceedings. The charges may have a political origin or character, and therefore tend to bring party feeling into play, making conviction difficult—a two-thirds vote of the Senate being required to convict. The meaning of the words "other high crimes and misdemeanors" is uncertain; and all this, with the fact that the terms of office of the President and his appointees are short, tends to discourage the frequent use of the process of impeachment. Mr. Bryce says:

A rare and cumbrous proceeding.

> Impeachment, of which an account has already been given, is the heaviest piece of artillery in the Congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to

aim at. Or to vary the simile, impeachment is what physicians call a heroic medicine, an extreme remedy, proper to be applied against an official guilty of political crimes, but ill adapted for the punishment of small transgressions.[1]

The Committee of Detail in the Constitutional convention first reported in place of the present provision, which denies to the President the power to pardon in cases of impeachment, a provision that the President's pardon should not be pleaded in bar of impeachment proceedings.

Pardoning power does not extend to impeachment.

"This," says Mr. Curtis, "would have made the power precisely like that of the King of England; since, by the English law, although the King's pardon cannot be pleaded in bar of an impeachment, he may, after conviction, pardon the offender. But as it was intended in the Constitution of the United States to limit the judgment in an impeachment to a removal from office, and to subsequent disqualification for office, there would not be the same reason for extending to it the executive power of pardon that there is in England, where the judgment is not so limited."[2]

In the Constitutional convention there was some discussion as to whether impeachments

[1] Bryce: American Commonwealth, vol. i., p. 208.

[2] Curtis: Constitutional History of the United States, p. 579.

should be tried by the Supreme Court or by the Senate. Mr. Madison and Mr. Pinckney objected to the Senate as rendering the President too dependent on the Legislature. Gouverneur Morris and others thought no other tribunal than the Senate could be trusted, and it was finally so agreed, the Chief Justice being designated to preside on the impeachment of the President. When the scheme stood for the trial of impeachments by the Supreme Court it became necessary to provide another tribunal for the case of an impeachment of one of the Supreme Court Justices, and the Senate was recommended.

Some propositions in Convention.

A proposition that the officer impeached should be suspended from office pending the trial was wisely rejected by the convention, and the officer now continues to exercise his office until a judgment of conviction is entered. The other rule would have put it in the power of the House of Representatives to suspend the President from office and to cast the office temporarily upon another. This would have fatally weakened the Executive and offered to partisanship a dangerous temptation. On the whole, no better mode of trying impeachments than that provided by the Constitution has, even in the light of our experience and development, been suggested.

The process of impeachment has been put into exercise seven times. In 1797 William Blount, a Senator from the State of Tennessee, was impeached for high crimes and misdemeanors. The charge was that he had conspired to set on foot within the United States a hostile expedition against the possessions of Spain in Florida, to excite the Creek and Cherokee Indians to hostilities against the subjects of Spain, and to overturn the authority and influence of the agents of the United States among those Indians. Before the trial of the impeachment he was expelled from the Senate by a resolution of that body, and when arraigned pleaded that he was no longer a Senator, and that he was not, at the time of the commission of the offences, a civil officer of the United States. The plea was sustained by the Senate and the accused was acquitted.

Impeachment cases.

In 1803 John Pickering, United States District Judge for New Hampshire, was impeached for certain malfeasances in office, in connection with which it was also charged that he had been drunk upon the bench, and was guilty of offences degrading to his character as a Judge. The accused did not appear and make any defence, but his son presented a petition alleging the insanity of his father. The accused was convicted and was removed from his office.

About the same time impeachment proceedings were begun against Samuel Chase, a Justice of the Supreme Court. The offence charged against him was misconduct in certain trials. He was acquitted by a majority vote of the Senate upon some of the articles of impeachment, and by a minority vote—but more than one-third of the Senate—upon the other articles.

In 1830 James H. Peck, Judge of the United States District Court for the District of Missouri, was impeached for malfeasance in office, especially in relation to certain proceedings in contempt against a member of the bar. He was acquitted by a vote of twenty-two for conviction to twenty-one against.

In 1862 Judge Humphreys, of the District Court of the United States for the District of Tennessee, was impeached. He had accepted and discharged the duties of a similar judicial position under the Confederate Government without resigning his office under the United States. He was charged with inciting rebellion, with organizing armed rebellion against the United States, etc. The accused did not appear, and was convicted and sentenced to be removed from office and to be disqualified from holding office.

The impeachment trial of Andrew Johnson is the most notable in the history of the exercise of

this power, but it is not possible here to describe at any length the proceedings in the case. They are reported at length in a special volume of the "Congressional Record." Andrew Johnson's case. Chief Justice Chase presided with great dignity and impartiality. The managers on the part of the House were John A. Bingham, of Ohio; George S. Boutwell, of Massachusetts; James F. Wilson, of Iowa; John A. Logan, of Illinois; Thomas Williams, of Pennsylvania; Benjamin F. Butler, of Massachusetts, and Thaddeus Stevens, of Pennsylvania. The counsel for the President as originally selected were Henry Stanbery, Benjamin R. Curtis, Jeremiah S. Black, William M. Evarts and Thomas A. R. Nelson. On the second day of the trial Judge Black withdrew and was succeeded by William S. Groesbeck. The "Congressional Record" states:

> On Monday, the 3d of March (1868), articles of impeachment were agreed upon by the House of Representatives, and on the 5th they were presented to the Senate by the managers on the part of the House, who were accompanied by the House, the grand inquest of the nation, as a committee of the whole on the state of the Union.

There were eleven articles in the presentment. They charged the attempted removal of Mr. Stanton as Secretary of War, and the appointment of Adju-

tant-General Thomas as Acting Secretary of War in violation of the Tenure of Office Act; the attempt to influence General Emery of the Army, in command of the Department of Washington, to violate the law, and to receive orders from the President not issued through the General of the Army, with the intent to prevent the execution of the Tenure of Office Act. They further charged that the President had, in public speeches, attempted to "bring into disgrace, ridicule, hatred, contempt and reproach the Congress of the United States," and to incite the people to disregard the laws; that he had declared publicly that the Congress "was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same." These charges were supported by numerous extracts from the public speeches of the President, made during that famous but mortifying tour of his through the country.

Benjamin F. Butler, one of the managers on the part of the House, in his book, says of his own part in the case:

> As to myself, I came to the conclusion to try the case upon the same rules of evidence, and in the same manner, as I should try a horse case, and I know how to do that. I therefore was not in trepidation. When I discussed that question with the managers they seemed to

be a good deal cut up. They said: "This is the greatest case of the times, and it is to be conducted in the highest possible manner." "Yes," I said, "and that is according to law; that is the only way I know how to conduct a case." Finding me incorrigible, they left me to my own devices.[1]

On May 16th the vote was taken in the Senate, nineteen Senators voting "not guilty," and thirty-five "guilty"—one less than the necessary two-thirds. Eleven Republican Senators, four of whom had supported Mr. Johnson's administration, voted for acquittal. The other seven were tremendously assailed by their political friends, but adhered firmly to their convictions. Mr. Foster says that "History has already pronounced her verdict that they saved the country from a precedent big with danger and vindicated the wisdom of those who made the Senate a court for the trial of impeachments."[2]

Belknap's case.

The next and last case occurred in 1876, when William W. Belknap, who was Secretary of War in the Cabinet of President Grant, was impeached. The charge against him was that he had corruptly received money from a post trader who had been appointed by him. Mr. Belknap resigned before he was impeached, and his

[1] Butler's Book, p. 929.

[2] Foster: Commentary on the Constitution, vol. i., p. 564.

counsel interposed a plea that at the time of the impeachment Mr. Belknap was not an officer of the United States. The plea was overruled, but by a majority of less than two-thirds of the Senate. The Senators who had voted to sustain the plea, upon the ground that the Senate was without jurisdiction, by reason of the resignation, subsequently voted for acquittal, and, being more than one-third of the Senate, the proceedings failed.

CHAPTER X

THE PRESIDENT (CONTINUED)

OFFICIAL LIFE AT THE EXECUTIVE MANSION—A HOME AND OFFICE COMBINED — HISTORIC DESK — OFFICE FORCE — THE MAIL—AUTOGRAPHS — BEGGING LETTERS — BUSINESS RECEPTIONS — DESK WORK—OFFICE-SEEKERS—SOCIAL OBSERVANCES—WASHINGTON'S QUESTIONS—HOUSE AND GROUNDS PUBLIC.

THE "Executive Mansion" is the official designation of the home of the President; the universal popular designation is the "White House." It is an office and a home combined — an evil combination. There is no break in the day—no change of atmosphere. The blacksmith, when the allotted hours of work are over, banks his fire, lays aside his leather apron, washes his grimy hands and goes home. And he gets a taste of unsmoked morning air before he resumes his work. There is only a door—one that is never locked—between the President's office and what are not very accurately called his private apartments. There should be an Executive Office building, not too far away, but wholly distinct from the dwelling-house. For every one else in the public service there is an unroofed space be-

The Executive Mansion—home and office.

tween the bedroom and the desk. The Cabinet room intervenes between the library and the room usually (but not always) used by the President as an office. Presidents Grant, Hayes, and Garfield used the Cabinet-room as an office. President Arthur took the large oval room above the Blue-room, which had before been a library and private sitting-room, for his office; and during his first term Mr. Cleveland so used it. But the room next east of the Cabinet-room was used by Mr. Lincoln, and generally before his time, as the office, and it is now so used. The Cabinet-room is used as a waiting-room. The President tries to get to his office in time to examine his mail before his callers begin to arrive, but is often anticipated by Senators and Representatives who have early committee engagements at the Capitol.

President's office.

The broad flat desk at which he seats himself is an artistic and historic piece of cabinet work. It is inscribed:

Historic desk

Her Majesty's ship "Resolute," forming part of the expedition sent in search of Sir John Franklin in 1852, was abandoned in latitude 74° 41′ north, longitude 101° 22′ west, on 15th May, 1854. She was discovered and extricated in September, 1855, in latitude 67° north, by Captain Buddington, of the United States whaler, "George Henry." The ship was purchased, fitted out,

and sent to England as a gift to her Majesty, Queen Victoria, by the President and people of the United States, as a token of good will and friendship. This table was made from her timbers when she was broken up, and is presented by the Queen of Great Britain and Ireland to the President of the United States as a memorial of the courtesy and loving-kindness which dictated the offer of the gift of the "Resolute."

The office force.

The office force of the White House is not large. The Private Secretary (now Secretary to the President) is at the head of it. His office is an important one, and discretion is the talent most in demand! He is not a deputy President. There is an Assistant Secretary, who carries and delivers the messages to Congress, and keeps a record of appointments and of bills submitted for the President's approval. There are six clerks, two of whom are executive clerks. One of these is stenographer to the President and has charge of the mail. The other is a purchasing and disbursing officer. Of the other clerks, one acts as stenographer to the Private Secretary, one is a telegraph operator, and these, with the remaining clerks, assist in the general office work. There is a doorkeeper for the President, and one for the Private Secretary. These, with four messengers, complete the office force proper.

The mail that comes daily to the Executive Mansion is very large; in the early months of an administration it is enormous, as many as eight hundred letters being sometimes received in a day. But few of these letters reach the President's desk. The mail is sorted by a trusted and confidential clerk; family and personal letters are sent unopened to the persons to whom they are addressed; letters relating to appointments are, as a rule, acknowledged by one of the clerks and referred to the proper Department; and only those that relate to the more important appointments and to matters of public interest are sent to the President's desk. No other course is possible, for, if he dealt personally with all his correspondents, the President could do nothing else. As it is, the mail that comes to his desk is large. The information has been spread very widely that the President does not read many letters, and the devices that are employed to make sure that letters will be seen by him are various and amusing. But the Secretary soon learns that the letters marked "personal," or "private," are quite as likely to be applications for office or requests for autographs as anything else. Sometimes a formal protest against the Private Secretary is endorsed on the envelope, as, "This is for

The mail.

"Personal" and "Private."

the President, not for the one who reads his letters." A correspondent who had forwarded many papers, the acknowledgment of all of which had been accompanied by the assurance that the papers had been referred to the appropriate department, rather pathetically wrote: "Your letters are all worded about the same."

Very many of the letters addressed to the President are trivial, not a few of them impertinent, and some of them angry and threatening. These, if the Private Secretary is a judicious man, the President never hears of, and the malicious intent of the writer is thwarted. The requests for autographs are scarcely numerable. A card, with an engraving of the Executive Mansion upon it, is provided for that use, and a pile of these cards upon his desk, and another of autograph albums, make their mute appeal to the President nearly every morning. Patches for autograph bed-quilts and lunch-cloths add to the burden. Begging letters, for numbers, take the second place in the President's mail. They come from every part of the land, and relate to every possible subject. There are appeals to aid the writer to get an education, or to pay off a mortgage, or to buy a piano or a pony; and no form of public appeal is absent—to aid the building of churches, to endow schools, to build monu-

Autographs—bed-quilts—lunch-cloths.

ments, and to aid every other good purpose for which men or women or children associate themselves. On one day the requests for specific sums aggregated nine thousand dollars. These appeals are unavailing, in the nature of things, and self-respect ought to restrain the practice. The President cannot aid every good cause or every needy person. He cannot know whether the person appealing to him is worthy, if he appeals in his own behalf, or properly accredited, if he appeals for a cause.

Begging letters.

A class of "space-writers" makes an especial mark of the President. He is invited to express himself theoretically or to give his experience upon an endless variety of subjects. What laborious introspection is invoked by the question: "What was the greatest thought that ever entered your mind?"

Many people greatly enlarge the powers of the President, and invoke his interference and protection in all their troubles. "I have six little children and they want to throw me out of my house. I have nowhere to go. I want protection," was the appeal by wire of a North Carolina woman. Another begs the President to pass a law "prohibiting anybody from hiring a prodagal (*sic*) boy."

How a letter to the President should be addressed is a question that perplexes many an in-

telligent person, and has had many amusing solutions. Sometimes he is addressed by letter writers as plain "Mister," sometimes as "His Majesty," or "His Lordship," and very often as "His Excellency." "The High Government at Washington" was thought to be an appropriate address by one writing from Austria; and a letter addressed to the "White Office" was rightly assigned by the intelligent mail clerk to the White House. The official title of the head of the Executive Department is "The President." All propositions to add adorning but superfluous titles were rejected in Washington's time. The correct letter address is, therefore, "To the President," and the oral address, "Mr. President."

Proper address.

The President does not carry his title with him when he retires from office, as the judicial and military gentlemen do. There may be many Judges and Majors, but there cannot be two Presidents. A gentleman who had been President, returning from a hunting expedition in a costume embodying no hint of the dignified position he had held, was approached by an impulsive fellow-traveller with the question: "Is this President ——?" "No," said the gentleman addressed; "I am Mr. ——, of ——." The countenance of the questioner fell as she begged pardon and returned to her seat. But the rather

Only one President—An incident.

boisterous laughter of some young folks, who had taken in the situation, slowly revealed it to her, and she came forward again to say: "Well, I want to shake hands with you even if you ain't President now."

Business receptions—only five minutes wanted.

Letters can be turned over to clerks, but callers are not to be so disposed of. Unless the President is very early, he will find some callers waiting for him as he passes through the Cabinet room to his office. The rules, which are displayed on large cards, announce that the President will receive persons having business with him between certain hours, usually from 9:30 or 10 A. M. until 1 P. M., except on Mondays; but the hours and the exception are very little regarded, and it is a rare piece of good fortune during the early months of an administration if the President gets one wholly uninterrupted hour at his desk each day. His time is so broken into bits that he is often driven to late night work, or to set up a desk in his bedroom, when preparing a message or other paper requiring unbroken attention. Thoughtlessness is the root of all this. "I only want five minutes"; and if he were the only one it could be spared; but his double is at his heels, and the urgent public business is postponed or done at night with a jaded mind. It may be said that untimely visitors should be excluded, and so they

should; but thoughtfulness on their part would be a cure without a smart. The President's messenger brings in the cards or announces orally the names of the visitors, and they are admitted singly, or all are ushered, as they arrive, into the President's office, as he may direct. He usually receives them standing near his desk—especially when a number are present—and in the order of their official station, if they are public officers. Those not engaged with the President stand back, and the conversation with each, as he is received, is conducted in a low tone that secures some degree of privacy. There are many Senators and Representatives, often accompanied by friends or constituents, either singly or in delegations, sometimes simply to pay their respects, but more often to urge some appointment.

In the latter case the President listens, and seems to the applicant to be painfully reticent. He concludes the brief interview by saying: "Please file your papers in the proper department, and I will consider the matter." This incident is repeated over and over —perhaps a hundred times in the course of a morning. The business has not been much advanced, if at all. The appointment may not come before the President for action for several months, and in the nature of things he can recall little, if

The office-seekers.

anything, of what was said so long before. He has been told that Mr. A——, an applicant for the post-office at ——, is a dissipated, disreputable man, and that Mr. B——, who wants the same place, possesses all of the virtues, and talents of the highest order; but if the President depended upon his memory these vices and virtues might be wrongly assigned. All this is explained over and over again to applicants and their friends, but the feeling that something is, or may be, gained by a personal interview prevails, and for the first year and a half of an administration the President spends from four to six hours of each day talking about things he will not have to act upon for months, while the things that ought to be done presently are hurtfully postponed. Generally, in the case of home places, the application is for a particular office, but in very many cases, especially as to consular places, the application is general—for a place to be hunted up by the President and fitted to the applicant. Such cases are particularly trying.

If the President could make up and publish an appointment docket, and notify all persons having anything to say in a particular case to "draw near" on a fixed day, it would result in a great saving of time all around, and a great saving of money to the applicants, who could remain at home

until summoned to appear. No papers should be received after the submission of the case, and motions for a rehearing and for a new trial should be barred.

When the coming of the lunch hour has brought the morning reception to an end, and the President is again at his desk, one of the Cabinet officers appears by appointment, accompanied by a messenger with an armful or a basketful of papers—chiefly made up of petitions and letters relating to appointments. Each case has been briefed and jacketed, and one by one they are presented, the Secretary adding such information as he has, outside the papers. The conclusions reached are noted—to appoint a particular person, or to prosecute a further inquiry. The Postmaster-General brings a large clothes-basketful of papers, and an adjournment to the long Cabinet table is necessary in order to display them. He takes up the papers relating to a post-office and briefly states the case. If the case is decided he fills in the blank on the jacket, "Appoint ——," the President affixes his initials, and the package is thrown back into the basket. A whole afternoon is often consumed in this way.

Afternoons with Cabinet officers.

But the conferences with the heads of departments are by no means limited to the matter of appointments. All large matters, and many small

ones where controversies have arisen, are the subjects of consultation. The President has a real connection with each department, and is fully informed as to the plans of the Secretary. It is almost always the Secretary who asks for the consultation. If the matter is difficult, he wants counsel; if the decision is likely to evoke opposition, he will need support.

Desk work—bills and commissions.

If there is no appointment with a Cabinet officer, or with some other official who has asked for a special interview, the President takes up the work upon his desk. There may be a hundred commissions waiting for his signature. The messenger comes in, takes the sheets as they are signed, and spreads them about on the desk or on the floor to dry; sometimes the room is carpeted with them. Next a pile of bills passed by Congress and submitted for his approval appeals to him, and one by one they are taken up and read. Usually the reports of the Committees of the House and Senate that reported the bills are attached to them, and also the report of the head of the department to which the proposed legislation relates. These are examined, and, if no objection is found, the President writes, "Approved," with the date, and affixes his signature. If he thinks the bill should be vetoed it is laid aside—until he can prepare the veto message.

But the desk is not yet cleared. Here are from five to twenty applications for pardon, and for the remission of forfeited recognizances. Some of the cases are small as to bulk, and small as to the penalties from which relief is sought. If a bond in the sum of fifty dollars for the appearance of a person charged with some petty offence against the United States is forfeited, only the President's signature can relieve the property of the surety from the lien. Many of these cases are of ancient origin, and the lien is only revealed when the title-searcher prepares an abstract as the basis of a sale or a loan. These cases, like pardon cases, come through the Department of Justice, accompanied by a favorable or an unfavorable recommendation from the Attorney-General. But the President must examine the papers sufficiently to have at least a general idea of the case, for the act and the responsibility are his. But there are many cases of great bulk, involving long terms of imprisonment, and not a few where the death penalty has been pronounced. These involve the conscientious examination of hundreds of pages of evidence, affidavits, and petitions. When all of these cases have been decided and the decision properly endorsed and signed, the President has yet another class of papers from the Department of Justice to be disposed of.

Pardons—Remissions — Marshals' accounts.

These are the claims of United States Marshals for the allowance of extraordinary expenses incurred by them—in pursuing a mail robber or other criminal, and like matters. The claim may be for no more than ten dollars—they are usually small—but it cannot be paid until the President has approved it. The court has approved it upon a presentation of the vouchers, and the Attorney-General has endorsed his approval; but this is only preliminary and does not authorize its payment. The examination by the President is more or less particular, but there is always some examination.

The "Great Father."

The Interior Department has sent to the desk some papers that make the President realize that he is not only in Indian parlance, but in fact, the "Great Father." An Indian, to whom an allotment of land has been made, desires to sell a part of it, or to exchange it for another tract. His petition to the local court sets out his case, and the court finds that it would be to his interest to make the sale or exchange, but the approval of the "Great Father" must be endorsed upon the deed before it can take effect. In one case the paper that found its sluggish way through the Court, the Indian Office, and the office of the Secretary of the Interior, was the license of an Indian to a white man to take a few perches of stone from the land of the former. Again, the

"Great Father" may be called upon to approve an order allowing a tribe to market some down timber on the reservation, or to consider the advisability of allowing certain of his red children to travel with a show.

Courts-martial.

The War and Navy Departments have possibly each contributed a court-martial record—a great manuscript volume—from the pages of which the President is to learn whether the charges have been satisfactorily proved, and whether there are any extenuating circumstances that will justify him in saving the culprit from the sentence of dismissal from the service which has been pronounced upon him.

Newspaper men.

The day would not be a typical one without a call from one or more newspaper men. For routine business items, and for social news, the reporters deal with the Private Secretary, but when there are rumors of important public transactions—and such rumors are perennial—some of the more prominent of the newspaper men expect to have a few moments with the President. With some of these—gentlemen who have become known to him as men who have not placed their personal honor in the keeping of any newspaper proprietor or managing editor, but hold it in estimation and in their own custody—the President sometimes talks with a good

deal of freedom. Of course, confidential things are not disclosed; he does not give an interview, and is not quoted; but erroneous impressions of what has been done or is in contemplation are often corrected. There are many men of fine ability and of the highest personal character among the newspaper writers at Washington.

Public receptions—hand-shaking.

The President's popular receptions begin the next day after his inauguration, and are continued for a good many days without much regard to hours. When the great East Room fills up he goes down and takes his station near the door of exit. The head usher introduces some who are known or who make their names known to him, but generally the visitors make known their own names to the President, or pass with a hand-shake without any introduction—often at the rate of forty or fifty to the minute. In the first three weeks of an administration the President shakes hands with from forty to sixty thousand persons. The physical drain of this is very great, and if the President is not an instructed hand-shaker a lame arm and a swollen hand soon result. This may be largely, or entirely, avoided by using President Hayes's method—take the hand extended to you and grip it before your hand is gripped. It is the passive hand that gets hurt.

When the inaugural visitors have disappeared these popular East Room receptions are brought into order and occur usually three times a week, at one o'clock. It has been suggested that a bow should be substituted for the hand-shake; but it would be quite as admissible to suggest a revision of the Declaration of Independence. The interest which multitudes attach to a hand-shake with the President is so great that people will endure the greatest discomfort and not a little peril to life or limb to attain it. These are not the office-seekers, but the unselfish, honest-hearted, patriotic people whose "God bless you" is a prayer and a benediction. They come to Washington for the inauguration, and later with visiting excursions, but they are mostly to be found near their own homes. They come out to meet the President when he takes a journey, and his contact with them, and their affectionate interest in him, revive his courage and elevate his purposes. Mr. Lincoln is said to have called these popular receptions "his public opinion baths."

Social observances -- Washington's questions.

How the President should conduct himself in social matters was a question that even the pressing and important work of organizing the Government could not exclude from the early consideration of Washington. McMaster says: "While the House was busy debat-

ing by what name the President should be called, Washington was troubled to know in what manner he should behave." To solve his difficulties he framed a set of questions and submitted them to Hamilton and Adams. "Should he keep open house after the manner of the Presidents of Congress; or would it be enough to give a feast on such great days as the Fourth of July, the thirtieth of November, and the fourth of March? Would one day in the week be sufficient to receive visits of compliment? What would be said if he were sometimes to be seen at quiet tea-parties? When Congress adjourned, should he make a tour?"

Mr. Adams thought that two receptions each week should be held; that persons desiring to see the President should apply through the Secretary of State; that the nature of the business should be stated to a "gentleman in waiting," who should decide whether the visitor should be received; that the time for such visits should be limited to one hour, or two at the most; that his private life should be very much at his own discretion, but that in his official character "he should have no intercourse with society but upon public business or at his levees." Hamilton thought there should be one reception each week, at which the President should remain a half hour; that he should accept no invitations, and give formal entertain-

ments not more than four times a year; that the heads of Departments, and some descriptions of foreign Ministers and Members of the Senate should have access to the President on public business. This latter for the reasons that in Europe peers of the realm had access to the king, and that it "will be satisfactory to the people to know that there is some body of men in the State who have a right of continual communication with the President. It will be considered a safeguard against secret combinations to deceive him."

The grounds of the Executive Mansion are now practically a public park; for, though enclosed by high iron fences, the gates stand open, save that the gates to the grounds south of the house are closed and locked at night. The driveway in front is a thoroughfare, and the walks are used as freely as the sidewalks of the city. Until screens were placed in the windows of the private dining-room it was not an unusual incident for a carriage to stop in front of them while the occupants took a gratified view of the President and his family at their breakfast or lunch. Some of the department clerks once remonstrated against the closing of the gates to the grounds south of the house because the walk around the ellipse was a little longer. There is not a square foot of ground, not a bench nor a

The grounds—no privacy.

shade tree, that the President or his family can use in privacy.

The Executive Mansion is open to visitors from 10 A.M. to 2 P.M.—the large East Room or parlor to every well-behaved person without any card or introduction. The other three parlors, called the Green, Blue, and Red Parlors, and the conservatories, are shown to those who bring a card from a Senator or Member, or are otherwise introduced. The private dining-room is the only room on the first floor of which the President's family has an exclusive use. Charles Dickens, in his "American Notes," gives an interesting but exaggerated account of the freedom of the Executive Mansion in 1842. He says:

Most of the rooms public—Dickens's visit.

We entered a large hall, and having twice or thrice rung a bell which nobody answered, walked without further ceremony through the rooms on the ground floor, as divers other gentlemen (mostly with their hats on and their hands in their pockets) were doing very leisurely. Some of these had ladies with them, to whom they were showing the premises; others were lounging on the chairs and sofas; others, in a perfect state of exhaustion from listlessness, were yawning drearily. The greater portion of this assemblage were rather asserting their supremacy than doing anything else, as they had no particular business there, that anybody knew of. A few were closely eying the movables, as if to make quite sure that the President (who was far from popular) had

not made away with any of the furniture, or sold the fixtures for his private benefit.

This is only an outline of a business day and its surroundings, but it will serve, perhaps, to show that the life of the President is a very busy one. What contrariety and what monotony! One signature involves the peace of the nation, another its financial policy, another the life of a man, and the next the payment of ten dollars from the National Treasury. What monotony in the appeals for office! During the war an old contraband, who found employment in the camp of one of our regiments, improvised a banjo from the rim of a cheese-box and an old parchment. The banjo had only one string, and his song only four words, but the picking and the song had the longevity if not the melody of the brook. Hired by some mischievous fellows, the musician would seat himself near the Colonel's tent and begin a serenade more trying to the nerves, more hostile to sleep, than bursting shells. The President cannot call the officer of the guard.

Monotony—a story.

The applicants for office are generally respectable and worthy men, and many of them are the personal friends of the President. They are entitled to a respectful and kindly hearing, but at the end of one hundred days of this work the President should not be judged too harshly if he shows

a little wear, a little loss of effusiveness, and even a hunted expression in his eyes. It is said that when a friend spoke to Mr. Lincoln of the wear and weariness of so much hand-shaking he replied that "the tug at the hand was much easier to bear than that upon his heartstrings for all manner of favors beyond his power to grant;" and at another time he said that "it sometimes seemed as if every visitor darted at him, and, with thumb and finger, carried off a portion of his vitality."

Few Presidents retain the capacity to catch the present, but well-covered, humor of such intercourse. A fresher mind would at least note the transformations from tall to short, and from thick to thin, of the man who first named the President for his high office.

CHAPTER XI

THE STATE DEPARTMENT

EIGHT EXECUTIVE DEPARTMENTS—THE CABINET TABLE—ORIGIN OF THE OFFICE—UNDER THE CONFEDERATION—UNDER THE CONSTITUTION—OFFICE FORCE AND METHODS—FOREIGN CORRESPONDENCE—CONSULTATIONS WITH THE PRESIDENT—PRESENTATION OF MINISTERS—THE CONSULAR SERVICE—SHOULD LEAVE POLITICS AT HOME.

THE executive and administrative business of the Government is transacted through eight executive departments. The heads of these departments constitute the Cabinet, and they take rank at the Cabinet table in the following order: On the right of the President is the Secretary of State; on his left the Secretary of the Treasury; next to the Secretary of State is the Secretary of War, and opposite to him the Attorney-General. Next to the Secretary of War is the Postmaster-General, and opposite to him the Secretary of the Navy. Until the creation of the Department of Agriculture the Secretary of the Interior had the foot of the table to himself; now he shares it with the head of the new department, though the breadth of the table is hardly sufficient to receive two seats. The "cabinet-

Executive departments—the Cabinet table.

maker" who designed the table did not allow for the growth of the official family. Already a farther addition is being urged—a Secretary of Commerce and Manufactures — and if he comes into being a new table must be provided. Perhaps an extension-table may be the thing.

The head of the Cabinet.

The Secretary of State is popularly called the head of the Cabinet; and in affairs of ceremony and in the order of succession to the presidency—in the event of the death of the President and Vice-President—is such. He is often the ablest and most experienced statesman in the Cabinet, and this personal element, if present, gives him a natural pre-eminence among his associated advisers at the Cabinet table. But in no other sense is he a head as to any department save his own. He does not select his associates, may not even be consulted as to their selection, nor can he direct anything in their departments.

Secretary of State — Selection — Mr. Seward.

The Secretary of State has been often selected from the list of those who were competitors of the President for the presidential nomination. In the case of Mr. Lincoln, whose great powers were little understood by the country when he came to the presidency, the choice of his chief competitor, Mr. Seward, for Secretary of State was a very wise and a very brave act. The choice gave confidence to those

anxious patriots—perhaps a majority of the loyal people, certainly so in the Eastern States—who had yet to learn that this plain man from the West was unmatched in wisdom, courage, and intellectual force. It was a brave act, because Mr. Lincoln could not fail to know that for a time Mr. Seward would overshadow him in the popular estimation; and a wise one because Mr. Seward was in the highest degree qualified for the great and delicate duties of the office. A man who is endowed for the presidency will know how to be President, in fact as well as in name, without any fussy self-assertion.

The American Colonies, when serious differences with the mother country developed, found it necessary to have representatives in London, to present and support their petitions for the redress of grievances, to observe and oppose threatened parliamentary action, and to keep the Colonial assemblies advised as to all happenings that affected the interests of the Colonies. These "agents," as they were called, were primarily charged with the commercial interests of the Colonies. It became a sort of consolidated diplomatic and consular service. Franklin served several of the Colonies in this capacity. The First Congress, in 1774, made use of these Colonial agents in the presentation of an

The Colonial agents.

address to the King. In 1775 Congress constituted from its members a committee to conduct the foreign correspondence, called the "Secret Committee of Correspondence." A little later a "Committee of Foreign Affairs" was organized. All foreign correspondence was conducted through these and other committees, or by the direct action of Congress. The inadequacy and inefficiency of this method—if that can be called a method which is certain and methodical in nothing—became so apparent that in January, 1781, Congress inaugurated measures for the establishment of a Department of Foreign Affairs, and in the following August Robert R. Livingston, of New York, was chosen as the first "Secretary for Foreign Affairs." It must be recalled that the Congress then exercised all executive powers, and so the rules of the new office required the Secretary to lay all matters before Congress, and to "transmit such communications as Congress shall direct." He was permitted to attend Congress "that he may be better informed of the affairs of the United States and have an opportunity of explaining his reports." Mr. Livingston took office September 23, 1781. After a brief exercise of the office he submitted to Congress some suggestions for the better conduct of the business, and in February, 1782, Congress adopted

Foreign Affairs under the Confederation.

resolutions providing, among other things, that the official designation of the Secretary should be "Secretary of the United States of America for the Department of Foreign Affairs;" that the letters of the Secretary to the Ministers of the United States and to the Ministers of foreign powers, relating to treaties or other great national subjects, should be submitted to and receive the approbation of Congress before they were sent; that plans of treaties, instructions to our representatives, and other like papers, the substance of which had been approved by Congress, should, after being reduced to form, be again submitted to the opinion of Congress. The office was not well designated. The Secretary was rather the "Secretary of Congress" than the "Secretary of the United States of America;" but the substitution of a Secretary for the committees that before had our foreign affairs in charge was a step in the direction of the establishment of an Executive Department of the Government.

In June, 1783, Mr. Livingston resigned to accept the office of Chancellor of the State of New York. We do not wonder that with a salary of only $4,000 he should have said he was compelled to draw upon his private fortune to support the office. That has been the fate of all, or practically all, of his suc-

Livingston—Jay—Inadequate salary.

cessors; for, while the salary of a cabinet officer has been for many years just twice that received by Mr. Livingston, the expenditures necessary to maintain the social position which custom has assigned to the office are greatly more than the salary. A Secretary of State who maintains an establishment and entertains the foreign Ministers and the general public with the generous hospitality now expected of him, will owe much gratitude to his major-domo if, at the end of a four-years' term, he has not contributed from his private fortune to the support of his office a sum much greater than the salary he has received. This is an evil, for it may happen that the man best fitted for the office may refuse it—or leave it as Livingston did—rather than sacrifice a small private fortune to social demands. Dinners were, in Livingston's time, as now, diplomatic agencies, as well as imperative social events.

John Jay was Livingston's successor in office, and entered upon his duties December 21, 1784. He continued in office—though never reappointed by Washington—for some time after the adoption of the Constitution, and though commissioned as Chief-Justice of the Supreme Court, September 26, 1789, discharged his duties in the State Department until February, 1790, when Thomas Jefferson, who had been appointed Secretary of State while in Europe, returned and took the office.

The first act under the Constitution establishing the department was approved July 27, 1789. It was called "The Department of Foreign Affairs," and its principal officer "The Secretary for the Department of Foreign Affairs." On September 15th following another act was passed changing the designation of the department to "The Department of State," and that of its principal officer to "The Secretary of State." It seems that the dropping of the word "foreign" from the designation of the department was significant of a purpose to charge the Secretary with some domestic duties and powers. For we find that legislation followed very soon providing for the filing of applications for patents in the State Department, and the keeping of the patent records therein. The department was also made the repository for copyrighted books, had the supervision of the census and of the publication of the census reports, and in a measure the supervision of the Territories. All of these domestic functions were, in 1849, transferred to the Interior Department. The matter of copyrights, at a later period, was transferred from the Interior Department to the Librarian of Congress.

The department under the Constitution.

Many domestic duties.

The office force of the Secretary of State consists of three assistant secretaries, one chief clerk, six

chiefs of bureaus, one translator, one private secretary to the Secretary, fifty-seven clerks of the various classes, three despatch agents —one at London, one at New York, and one at San Francisco—and four messengers. Forty-five laborers, watchmen, firemen, elevator men, and charwomen, in addition, make a total office force of about one hundred and twenty-two; the aggregate of their annual salaries being (1896) $144,980. A solicitor is assigned to the department, as its law officer, from the Department of Justice.

The office force.

A bureau is, in American usage, a subordinate department, to which particular matters are assigned with a view to a prompt and orderly administration. The names of the bureaus in the State Department will sufficiently show, in a general way, how the work of the department is conducted. They are the Bureau of Indexes and Archives, the Diplomatic Bureau, the Consular Bureau, the Bureau of Rolls and Library, the Bureau of Statistics, and the Bureau of Accounts. When it will farther facilitate the work divisions are organized, over each of which there is a division chief. Thus in the Diplomatic Bureau, to Division A is assigned the correspondence with specified nations; to Division B that with certain others, and so on. This correspondence

The bureaus—methods of business.

goes first to the Bureau of Indexes and Archives, where it is opened and an index of it made; then to the chief clerk, who sends it either to the Secretary or to one of the assistant secretaries, or directly to the Diplomatic Bureau, as the nature of it requires. The Diplomatic Bureau either originates the necessary answers or prepares them under instructions. These answers are sent to the Secretary, and, if approved by him, are signed and sent to the Bureau of Indexes and Archives to be indexed, and thence again to the Diplomatic Bureau to be mailed. This is what is called "red tape;" it is, in fact, necessary method, for it is essential that the action of the department shall be recorded, and that an index shall furnish a ready reference to such action. Perhaps this sample of routine is enough—more might be tiresome.

Consultations with the President—Jefferson's practice.

Important despatches, relating to international differences or declaring a national policy, are prepared by the Secretary, are sometimes the subject of a Cabinet discussion, and are always the subject of a conference with the President. That this was so from the beginning appears from such notes as these addressed by Mr. Jefferson (Secretary of State) to Washington:

Mr. Jefferson has the honour of enclosing for the perusal of the President, rough drafts of the letters he sup-

poses it proper to send to the court of France on the present occasion. He will have that of waiting on him in person immediately to make any changes in them the President will be so good as to direct, and to communicate to him two letters just received from Mr. Short (chargé d'affaires to France).

And, again:

He sends some letters for the President's perusal, praying him to alter freely anything in them which he thinks may need it.

President sometimes drafts despatch.

It may happen that the President will himself prepare a draft of the proposed despatch, and that after a consultation this may be accepted by the Secretary; or the despatch sent may be a modification of the draft proposed by one or the other. The note is always signed by the Secretary, and no record discloses its actual composer. So, some writings signed by the President, and ceremonious speeches read by him, are not the product of his pen. Such are not infrequently, as has been said, the formal responses made by the President on the presentation of foreign Ministers. The State Department, in anticipation of the presentation, having a copy of the Minister's proposed address, frames what, in the opinion of the Secretary or of one of the assistant secretaries, would be a suitable response, and the draft,

Addresses to Ambassadors—Thanksgiving proclamations.

or a modification of it, is often used by the President. When the President wishes to say something that is not formal he rejects this draft and writes his own address. So, too, it is the practice of the State Department to send to the President drafts of his Thanksgiving proclamations. My memory is that two of the four Thanksgiving proclamations issued by me were written in the State Department and only slightly modified by me, and that the other two were written wholly by me.

So, also, the congratulatory letters signed by the President, in response to the official announcement of the birth of some prince or princess to one of the royal families, is a State Department composition. Whenever a prince or princess is born the head of the foreign office at once notifies all other governments of the happy event. All this is natural as between monarchs; for it is important to have the royalty of the babe officially certified, and the list is useful when a prince or princess is in search of a wife or husband. But it seems almost incongruous to notify a Republican Government like ours of such an event. The form in use for an answer to such communications was possibly prepared by Jefferson. It assures the happy parents of the great joy felt by the President and by the people of the United States over the event. The language in

Royal infants—congratulatory letters.

use was so tropical that when such a congratulatory letter was presented for his signature one of our Presidents felt compelled to use the blue pencil with vigor. Perhaps if we were to notify "our great and good friends," the kings and queens of the earth, of the birth of every "heir possible" to the presidency, they would break off the correspondence!

Reception of the first foreign Minister.

The ceremonies observed in receiving the Ambassador or Minister of a foreign country are dignified, though quite simple. France sent the first diplomatic representative to this country (1778) in the person of M. Gérard. He came as Minister Plenipotentiary and Consul-General, and Congress at once constituted a committee to arrange an order of ceremonies for his reception. Some of the orders prescribed for this first reception are still used. The address of the Minister was to be presented to Congress in advance, as otherwise there could not be an immediate response, the President of Congress not being authorized to speak until Congress had taken action on the address. The full force of this reason does not apply to a reception by the President of the United States; but it is still appropriate and measurably necessary that the President should see the address in advance, especially as the rule prescribed in 1778, and ever since fol-

lowed, allows the address of the Minister to be given in the language of his country—with which the President may be wholly unacquainted. M. Gérard was escorted to the hall of Congress by two members of that body. Now the Secretary of State escorts the Minister. Then the Minister might attend the sessions of Congress and confer with that body in Committee of the Whole. Now the Minister confers with the Secretary of State, either on a particular day of the week, called "Diplomatic Day," or at other times especially appointed. After the reception the direct intercourse between the President and a foreign Minister is wholly social—all business being transacted with or through the Secretary of State. The President would deny and even resent any attempt on the part of a foreign representative to communicate directly with him. But it has happened that the President, at the request of the Secretary of State, has met a foreign Minister, and discussed with him an important international controversy which seemed to be blocked.

A question of social precedence that has since greatly shaken Washington society was settled for the time by the rules adopted by Congress in 1778, in these words: How presented now—a social question.

"After the audience the members of Congress shall be first visited by the Minister Plenipoten-

tiary or Envoy." Then, however, Congress was the body that received the Minister's credentials and conducted all business with him. The ceremony observed in receiving a Minister now is briefly this: On a day appointed by the President the new Minister drives with his secretaries and attachés to the State Department, and is thence escorted by the Secretary of State to the Executive Mansion and conducted to the Blue Room. The Secretary then goes to the President's office and advises him that the Minister is in waiting. The President, on the arm of the Secretary, then proceeds to the Blue Room, and, the Minister and his suite standing, the Secretary introduces the Minister, who, after bowing, proceeds to read his address, and at the proper time hands to the President his letters of credence, which are immediately passed to the Secretary of State. When the address of the Minister has been read the President reads his reply, and after a few moments spent in informal conversation retires with the Secretary, who, returning, conducts the Minister from the Executive Mansion.

Until 1893 the highest rank given by our laws to our representatives at the great European courts was that of Envoy Extraordinary and Minister Plenipotentiary; and the diplomatic usage forbade the giving of a higher

Ambassadors since 1893.

rank to their representatives at our capital. No foreign representative at Washington felt the inconvenience of this system, for he held as high a rank as any other foreign representative at our capital, and so was not inconvenienced in the transaction of business, nor subordinated at social functions. But our Minister at London, for instance, found in the diplomatic corps there Ambassadors, and some of them from very small powers; and these, on social occasions, and in the order of their reception for the transaction of business at the Foreign Office, took precedence of our Minister, because of their superior diplomatic rank. This was not infrequently the occasion of very considerable mortification to our Minister and of some detriment to the business in his charge. In 1893 the rank of our representatives at the courts of France, Germany, Great Britain, Russia, and Italy was raised to that of Ambassador; and at once the representatives of those powers at Washington were raised to the same grade.

How correspondence is conducted.

The correspondence between our State Department and the foreign office of another nation may be conducted in either of two ways: The Secretary of State may use the Ambassador or Minister of the foreign country at Washington as the medium of communication, delivering his notes to him to be communicated to

his home office; or he may use our Minister at the foreign court to conduct the correspondence under instructions. The government that has the initiative in the controversy is very apt to conduct the negotiations at its own capital, for greater convenience in consulting with the Executive, and for greater certainty in stating its case.

Salaries and expenses.

Our Ambassadors to the four great Powers of Europe each receives an annual salary of $17,500, and our Ambassador to Italy $10,000. Out of his salary the Ambassador must provide his own residence and meet all official and social demands. Several of the Powers have provided houses for their legations at Washington, but this Government has never thus provided for any of its representatives abroad. The diplomatic service has sometimes been assailed in Congress as a purely ornamental one; and while the evident necessity of maintaining the service is such as ought to save it from the destructionists, it is quite true that our diplomatic relations with some of the Powers are more ceremonious than practical. But we must be equipped for emergencies, and every now and then, even at the smallest and most remote courts, there is a critical need of an American representative to protect American citizens or American interests.

The consular service is the business side of our

foreign establishment. There are more than twelve hundred persons employed in this service. They are located in the important commercial cities and towns of the world, and are described as consuls-general, consuls, commercial agents, interpreters, marshals, and clerks. The duties of a consul are multifarious. He is the protector and guardian of American commerce; provides for destitute American sailors and sends them home; takes charge of the effects of American citizens dying in his jurisdiction and having no legal representative; receives the declarations or protests of our citizens in any matter affecting their rights; keeps a record of the arrival and departure of American ships and of their cargoes, and looks after vessels wrecked; reports any new inventions or improvements in manufacturing processes that he may observe, and all useful information relating to manufactures, population, scientific discoveries, or progress in the useful arts, and all events or facts that may affect the trade of the United States, and authenticates invoices and statements of the market value of merchandise to be shipped to the United States. Every consulate is a commercial outpost; and if the service could be given permanence of tenure, and a corps of men of competent equipment, it would become a powerful agency in extending our commerce.

The consular service—duties.

The need of a better consular service has been getting a strong hold upon the public mind. The practice has been to make frequent changes in these offices—indeed, an almost complete change upon the coming in of an administration of a different party. An acquaintance with the language of the country in which he serves is so important as to be nearly indispensable to the full discharge of a consul's duties. For he should be able to go into the shops and offices of commerce, familiarize himself with all new processes, and discover any openings that may present themselves for the extension of our trade.

Better service needed.

It is remarked that changes in the home administration in other countries, such as England and France, do not involve changes in the ambassadors or ministers or consuls, as they do with us. The English Ambassador at Washington holds on whether the Liberals or the Tories are in power. He represents his country, not a party, and carries out his instructions from the home Government loyally. He is never heard to make speeches attacking the policy of the governing party—or criticising his own people. Perhaps one of the chief difficulties in the way of our getting a permanent diplomatic and consular service grows out of the fact that the tariff ques-

Ambassadors and Consuls should leave their politics at home.

tion is one that is always acute in our politics, and the reports of our consuls and the speeches of our ministers too often express the views held by them upon this question. We cannot have a permanent diplomatic and consular service until we can find diplomats and consuls who will leave their party politics at home. If these are to be aired or exercised abroad, then it follows that they must be in harmony with the party in power at home. There is no other way as to officers whose work and expressions affect public or political policies—however much we may wish there were.

The Secretary of State is the custodian of "The Great Seal of the United States of America." When the civil list became so large that it was impracticable to use the Great Seal to certify the President's signature to all commissions, Congress authorized the use of the seals of the Post-office Department, of the Interior Department, and of the Department of Justice respectively, in certifying the commissions of all officers under those departments.

The "Great Seal" and its use.

The law of 1789 provides "that the said Seal shall not be affixed to any commission before the same shall have been signed by the President of the United States, nor to any instrument or act without the special warrant of the President therefor."

A description of the devices proposed, or of the Seal as adopted, cannot be fully understood by those unversed in heraldry. The following was the interpretation of the Seal as adopted by Congress:

The Escutcheon is composed of the Chief and Pale, the two most honorable ordinaries. The pieces, paly, represent the several States all joined in one solid, compact entire, supporting a Chief, which unites the whole and represents Congress. The Motto alludes to this Union. The pales in the arms are kept closely united by the chief and the chief depends on that Union and the strength resulting from it for its support, to denote the confederacy of the United States of America and the preservation of their Union through Congress. The colors of the pales are those used in the flag of the United States of America; White signifies purity and innocence, Red, hardiness and valor, and Blue, the color of the Chief, signifies vigilance perseverance and justice. The Olive branch and arrows denote the power of peace and war which is exclusively vested in Congress. The Constellation denotes a new State taking its place and rank among other sovereign powers. The Escutcheon is borne on the breast of an American eagle without any other supporters, to denote that the United States ought to rely on their own Virtue.

Reverse. The pyramid signifies Strength and Duration: The Eye over it and the motto allude to the many signal interpositions of Providence in favor of the American cause. The date underneath is that of the Declaration of Independence and the words under it signify the

beginning of the new American era, which commences from that date.

The reverse, or pyramid side, of "The Great Seal of the United States of America" has never been cut.

CHAPTER XII

THE TREASURY DEPARTMENT

IT IS THE STEAM-PLANT—TRANSACTIONS AFFECT MONEY MARKET—OUR MIXED CURRENCY SYSTEM—GOLD REDEMPTION AND RESERVE—ESTABLISHED UNDER CONSTITUTION—HAMILTON THE FIRST SECRETARY—ORGANIZATION OF DEPARTMENT—PRINCIPAL OFFICERS AND THEIR DUTIES.

A public revenue essential.

THE first need that confronted the Government under the Constitution was a revenue. Independent national life is impossible without it. The security and convenience of the citizen come at a cost, and he must pay it. Taxes, a treasury, and a law authorizing the use of the public money for public purposes are primary things. Without these the mails would choke the deposit boxes; the courts would hold no terms, and criminals would be neither apprehended nor tried; all public officers would abandon their posts; the unpaid and unfed soldiers would desert the colors; the sailors would leave the decks of our smokeless war-ships; the Indian tribes would collect their annuities in the old way from the defenceless settlers, and our Government would be like a great mill filled with perfect machinery, but without fuel or a fire-box.

The Treasury Department is the steam-plant from which all the other departments get their power. In the ordinary operations of Government it is only a collecting and disbursing agency—collecting such taxes as Congress has authorized, and paying out the money as directed by law. It would be an ideal condition of things if the Treasury Department received each morning just the sum of money it had to pay out that day—no surplus money out of use in its vaults, no deficit to be met by loans. But things cannot be so nicely adjusted. Wars make burdens that a single generation cannot bear, and they must, in part, be put over upon other generations, by the sale of time bonds bearing interest. Out of the devices adopted to meet the great expenditure for the suppression of the Rebellion of 1861 it has come to pass that the Government furnishes, either directly or through the national banks, all of the money used by the people. The Treasury Department is now a great bank, and no longer a mere public collecting and disbursing agency. It prints paper money, pays it out for public uses, receives it in payment of customs duties and internal taxes, and pays it out again for salaries, supplies, and public works. It is also required to redeem the greenbacks and treasury notes—to give coin in exchange for them if demanded.

Treasury the steam-plant.

It would be out of place here to discuss the money question. It is enough to say that ever since the resumption of specie payments, in 1879, the Treasury has paid gold for greenbacks when gold was demanded, and has redeemed, in the same way, the notes issued under the Sherman Law. The Secretary of the Treasury has never exercised the discretion given him to redeem the latter notes in silver—holding that his discretion was limited to such a use of silver as would not destroy the parity of the gold and silver dollars, which the law says shall be maintained, and that the refusal to give the holder of these notes gold, when he demanded it, would destroy that parity. No one is bound to pay gold to the Government for any tax or other debt due to it. So that practically the situation is this: The Treasury holds itself bound to give gold to everyone presenting a United States note, and has no way of compelling anyone to pay gold to it. Such gold as it gets comes from persons who choose to take paper money for gold deposited at the mints, assay offices, or sub-treasuries, or to pay in gold coin some Government tax. Formerly all duties upon imports were payable only in gold. Now when the gold reserve gets low it can only be restored by the sale of bonds, under the powers given to the Secretary in the legislation relating to

Our currency system—Redemption.

the resumption of specie payments. This legislation does not permit the sale of bonds payable in gold, and Congress has refused to give the Secretary power to sell a gold bond. The situation would be absurd if it were not so serious.

The money operations of the Treasury Department are very large. For the fiscal year ending June 30, 1896, the receipts were $409,475,408.78, and the disbursements $434,678,654.48. The taking in and the paying out of such enormous sums must directly and strongly affect the money market, and so the general business of the country. And when the Treasury buys or sells bonds its influence on the market is greatly increased. If the revenues are largely in excess of expenditures the surplus is taken out of use in commerce and locked up in the Treasury vaults, and the money market is tightened. If the surplus is used to buy Government bonds not yet due the market is eased. The gold reserve, too, as it is diminished by exportations of gold, or increased by bond sales, powerfully affects every business interest. What is the Treasury going to do? is the query heard in every bank, and counting-room, and store. It is unfortunate, I think, that this should be so — and the mending of existing conditions will be a task for the wisest and strongest statesmanship.

Operations affect trade.

But, while the Secretary of the Treasury has a large discretion in a few directions, and may by its exercise largely influence the money market, he is, in the main, conducting a great bank on undeviating and unelastic rules, and with Congress for his board of directors. He is not chosen by the board, and is rather more often than not, out of harmony with it. The managers of the Bank of England may, by some small allowances in the way of interest or exchange, draw gold to its vaults from New York; but if fifty dollars would suffice to hold fifty millions of dollars of gold in the United States Treasury the Secretary could not expend that small sum. He must stand by until the gold is gone, and then sell bonds to bring it back. The result is that the banks and the brokers are able often to make play of the Treasury. A financial institution whose board transacts its business in public and airs all its disagreements, is at a disadvantage.

Discretion of Secretary.

The finances of our country were, like its foreign affairs, at the beginning, conducted by Congress through a committee—a method even less adapted to the keeping of money accounts than to diplomatic action. Accuracy and safety in money matters require the accountability of one man as a treasurer, a system of auditing and book-keeping, and a permanent office.

Treasury Department under Confederation.

The office came first, and then a Comptroller, an Auditor, and two Chambers of Accounts were provided by Congress. In February, 1779, the office of Secretary of the Treasury was created, but in the following July the system was changed and a Board of Treasury substituted. Two years later a Superintendent of Finance was provided for, and after three years more Congress again returned to the system of a Treasury Board. Our fathers were experimenting, and the truest and most creditable thing that we can say of them is that they profited by experience, and allowed the doctrine of evolution, as applied to civil institutions, to have its sure way.

Financiers had the hardest part.

Those who, as Committeemen, Boards of Treasury, or Superintendents, had charge of our finances before the adoption of the Constitution, had, of all men connected with the Revolutionary struggle, the hardest part. For who would not rather be shot at, with the privilege of returning the fire, than be ceaselessly dunned by importunate and suffering creditors? The Treasury got only such money as it could borrow, and such as the States voluntarily contributed. Nobody owed the Treasury anything, the collection of which could be enforced, and the Treasury owed nearly everybody something that could not be paid. The Army was half-clothed, and half-fed, and wholly unpaid. A soldier does not, however, much mind

his own diet or discomfort. Parched corn will do, and bare feet and bullet wounds do not altogether take the heart out of him—but a starving wife and baby do. Until by the adoption of the Constitution the Congress was given power to lay and collect taxes the state of the Treasury was not only lamentable but disgraceful.

Robert Morris, who had made a great name and a great fortune in mercantile pursuits, was appointed Superintendent of Finance on February 20, 1781, but did not accept until May; and it was several months later before he assumed full control of the office. Hamilton, pending Morris's acceptance, wrote to him as follows:

Robert Morris, Superintendent of Finance.

> I am happy in believing you will not easily be discouraged from undertaking an office, by which you render America and the world no less a service than the establishment of American independence. 'Tis by introducing order into our finances, by restoring public credit, not by gaining battles, that we are finally to gain our object. 'Tis by putting ourselves in a condition to continue the war, not by temporary, violent and unnatural efforts to bring it to a decisive issue, that we shall in reality bring it to a speedy and successful one. In the frankness of truth, I believe, sir, you are the man best capable of performing this great work.

It seems that Morris had also a high estimation of Hamilton's ability as a financier, for it is said

that, in a conversation with Washington, and in response to the question, "What are we to do with this heavy debt?" he said: "There is but one man in the United States who can tell you—that is Alexander Hamilton."

Treasury under Constitution—Hamilton first Secretary.

The "Act to establish the Treasury Department" was approved by Washington, September 2, 1789, and on the eleventh day of the same month Alexander Hamilton was commissioned as Secretary. A funding scheme prepared by Hamilton having been adopted, the liberties wrested by arms from the British crown were made secure, and the credit of the Government passed from collapse into convalescence.

Of Hamilton's great work in the Treasury Department Webster said: "He smote the rock of the National resources, and abundant streams of revenue gushed forth. He touched the dead corpse of Public Credit, and it sprung upon its feet."

Public debt paid in 1835.

The interest-bearing debt of the United States was about $75,000,000 when Government under the Constitution was inaugurated. It had grown to $86,000,000 by 1804, had fallen to $45,000,000 in 1812; and the debt that many, at the close of the war of independence, believed to be as permanent as the Constitution, was paid in 1835.

The organization prescribed by the law of 1789 was a Secretary, to be the head of the Treasury Department; a Comptroller, an Auditor, a Register, and an assistant to the Secretary. This general organization is still in use, though there are now three Assistant Secretaries and six Auditors. Until recently there were two Comptrollers of the Treasury, but the Act of July, 1894, abolished the office of Second Comptroller, and there is now but one. Other principal officers have been added as new functions or the increasing work called for them, such as a Treasurer, Directors of the Mint, and of the Bureau of Engraving and Printing; Superintendents of the Life-Saving Service, and of the Coast Survey; a Supervising Architect, a Supervising Inspector-General of Steam Vessels, a Light-House Board, a Supervising Surgeon-General of Marine Hospitals, a Comptroller of the Currency, Commissioners of Internal Revenue, of Navigation, and of Immigration; and Chiefs of the Secret Service and of the Bureau of Statistics. The general duties of the Secretary, as prescribed in the law of September 2, 1789, have not been materially modified. They were: To collect the public revenues and to digest and prepare plans for the improvement and management thereof, and for the support of the public credit; to make estimates of receipts

The Department organization.

and expenditures; to grant warrants for moneys appropriated; to provide for the keeping of proper accounts, and to make reports and give information to Congress, in person or in writing, as required.

The Treasury Department receives all moneys due to the Government, pays out all moneys due from it, and keeps a book-account of all these transactions. Money is covered into the Treasury by warrants, upon which the Treasurer endorses his receipt, and is paid out upon warrants drawn upon him. The appropriation bills passed by Congress furnish the only authority for paying out money from the Treasury.

Collecting and disbursing agency.

The assistant secretaries have assigned to them the general supervision of the work and correspondence of specified bureaus and divisions. One of them may be designated by the Secretary to sign in his stead warrants for covering money into the Treasury, and for the disbursement of money upon accounts properly audited and settled, and, in the absence of the Secretary, to act as the head of the department.

The officer immediately in charge of and responsible for the public moneys is called the Treasurer, and the rooms and vaults in the Treasury Building at Washington used by him, and such other apartments as are provided for the deposit of public money, are

The Treasurer.

called the "Treasury of the United States." The Treasurer is charged, not only with the moneys in his vaults at Washington, but with those in other authorized depositories. He is required to pay the interest on the public debt, to receive the United States notes, and to issue new notes for notes returned, and destroyed by him. He redeems the notes of the national banks presented to him out of a fund the banks are required to keep with him. He is the custodian of the United States bonds deposited to secure the circulating notes of the banks, and to secure public money deposited with the banks.

A Register of the Treasury was provided for in the first organization of the Treasury Department.

Register of Treasury.

He was, until recently, a sort of general book-keeper for the department, and received and filed all adjusted accounts and vouchers, recorded and certified warrants for the receipt and expenditure of money, etc. The Act of July, 1894, established a Division of Book-keeping and Warrants, which is now required to keep an account of all the receipts and expenditures of the Government, except those relating to the Post-Office Department. The Register signs and issues United States bonds, registers those that are made payable to particular persons—as distinguished from the coupon bonds that are pay-

able to bearer—and furnishes to the Secretary a list of the persons to whom interest on the registered bonds is due. He signs transfers of money from the Treasury to any depository. He receives, arranges, and registers United States notes, Treasury notes, gold and silver certificates, interest coupons, and other securities redeemed and destroyed, and also all condemned customs, internal revenue, and postage-stamps.

Comptroller of Treasury.

A comptroller is one who controls. The Comptroller of the Treasury is a superior supervising officer of accounts. A First Comptroller once said, pleasantly but proudly, to the President: "No one can overrule me—not the Secretary, not even you, Mr. President." "No," said the President, "I cannot overrule your decisions, but I can make a new Comptroller." The Comptroller of the Treasury is no longer required to supervise and settle all of the accounts acted upon by the auditors, but only such as may be appealed to him—the claimant, the head of the department, or of the board or commission, not under a department, to which the account appertains, or the Comptroller himself, having the right to bring the case up for review. Upon the request of the head of a department, or of any officer charged with the duty of paying out public moneys, the Comptroller must, in advance,

give his opinion as to the rightfulness of a proposed payment, and the opinion given governs in adjusting the account. When an original construction of a law is made by one of the auditors, or a construction before adopted is modified, the Comptroller must pass upon the question. The decisions of the Comptroller are binding upon all executive officers, including the Secretary of the Treasury. But he may be reviewed by the courts if the matter is taken there, and the Secretary may suspend payment of an account and order a reexamination. All warrants for the disbursement of money must be countersigned by the Comptroller.

There is still another comptroller in the Treasury Department, but his sphere is limited. His bureau was established in 1863, and the head of it is styled the "Comptroller of the Currency." He is charged "with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds," and is to perform his duties "under the general direction of the Secretary of the Treasury." Those duties are to supervise the national banks and to see that the law is complied with in every particular in the organization of such banks. His certificate is necessary before a bank can open for business.

Comptroller of the Currency.

Regular reports are made to him by every bank, showing the state of its business, and he may call for special reports from all or any of them. He has under him bank examiners, who visit the banks and examine their accounts. In case of the failure of a bank he may take charge by an agent or receiver, and wind it up and distribute its assets to its creditors. He causes the bank-notes to be printed, and delivers the same to the banks as they may be entitled to them.

There are six auditors in the Treasury Department, and all the accounts of the Government are examined and passed upon by them. Every public officer who pays out money must submit an account with proper vouchers, and he does not get credit against the moneys charged to him until his account has been audited and passed as correct. The auditors were, until very recently, designated by numbers—first to sixth inclusive; but, under the law of 1894, they are designated as auditors for the various departments — Auditor for the Treasury Department, Auditor for the War Department, etc. The old Fifth Auditor is now "Auditor for the State and other departments." The accounts allowed by the auditors are certified directly to the Division of Book-keeping and Warrants in the office of the Secretary of the Treasury, and a copy is sent to

The auditors.

the head of the department in which the account originated.

Internal Revenue.

Until the breaking out of the Civil War a permanent system of internal taxation was unnecessary. The customs duties, the proceeds of the public lands, and some smaller incidental sources of revenue, were relied upon to meet the current expenses, and if there was a temporary deficiency it was covered by loans, or by a temporary exercise of the internal taxing power—as in the unsatisfactory attempt to collect a tax on whiskey in 1791. But the gigantic struggle for the defence of the nation against secession not only called into exercise every taxing power given by the Constitution, but put every such power upon a high tension. Many of my readers are too young to remember how long and how greedy was the hand of the Treasury as it reached out into all parts of the land, and into the business concerns of every man and woman, to gather the revenues needed to carry on the war. Constitutional questions were judged liberally in those days, for it was not thought worth while to preserve the Constitution as a book and let the nation die. An Internal Revenue Bureau came naturally into being in 1862, as the managing agency of these internal taxes, and has probably become a fixture in the Treasury

Department. The head of the bureau is called the Commissioner of Internal Revenue, and his duty is, under the Secretary of the Treasury, to superintend the collection of internal taxes. These taxes are now chiefly those laid on distilled spirits, beer, tobacco, and oleomargarine. The Commissioner, through an army of store-keepers and gaugers, watches over the production of all distilled spirits, gauges every package and collects the tax upon each gallon. The receipts from internal revenue for the fiscal year ending June 30, 1896, were $146,762,864.74, being only about thirteen millions less than the receipts from customs.

Commissioner of Internal Revenue.

Very naturally the national coinage is under the direction of the Secretary of the Treasury; and so there is a Bureau of the Mint, and the head of it is called the Director of the Mint. He has the supervision of all the mints and assay offices. So, too, as all our paper money, including national bank-notes, is made, certified, and issued by the Treasury Department, the work of engraving the plates for all these circulating notes, for the United States bonds, and for our revenue and postage-stamps, and of printing the notes, bonds, and stamps, is done through a bureau of the department called the Bureau of Engraving and Printing. In the business of making coins

Director of the Mint.

and notes to be used as money of the United States the Treasury Department has an exclusive franchise, and is so jealous of it that it pursues vengefully all persons who attempt to make such coins or notes. To make this pursuit effective there is a Secret Service Division, with a chief and a corps of skilled detectives, whose business it is to uncover and arrest all counterfeiters of the coins or securities of the United States.

But the Treasury Department is more than a mere counting-office. Hidden away among its prosaic books of record, its piles of silver dollars, and the sedate men and women who foot the columns of the books and tell the tale of the dollars, are some workers who have to do with reports of heroic adventure, and of succor to the suffering or imperilled, and some sketches and models that are at least suggestive of art.

The Supervising Architect is an official of the Treasury Department, and his business is to prepare the plans for public buildings, and to superintend the erection of them. Some effort has been made to secure competitive designs from our best architects for the great buildings we are to erect, and it is to be hoped that by this means the monotony and unsightliness that have too much prevailed may be broken up.

Supervising Architect.

The Marine Hospitals, where our sick seamen are received and cared for, are managed by a Supervising Surgeon-General, under the direction of the Secretary of the Treasury.

Marine Hospitals and Coast Survey.

The Coast and Geodetic Survey is another most interesting and useful work which is supervised by the Secretary, though the Superintendent of it and his office force are not housed in the Treasury Building. The work of the bureau is highly scientific, and at the same time eminently practical and useful. It is to make a survey of our entire coast for a distance of twenty leagues from shore, and of all our harbors; to locate all shoals, rocks, and other dangers to navigation; to take soundings, and to chart all of these results for the use of sailing-masters. The geodetic work is the making of an accurate survey of land lines across the continent with a view to a more exact knowledge of the form of the earth. The surveys and calculations are made in part by officers of the Navy, detailed for that service, and in part by scientific men selected from civil life.

When the Coast Survey has revealed and charted the dangers and the safe paths of commerce, then the Light-House Board, of which the Secretary of the Treasury is ex-officio President, takes up the work of marking by suitable buoys and lights these ascer-

Light-House Board.

tained dangers and paths. The coasts of the oceans and the lakes are divided into districts, and an inspector (a Naval officer) and an engineer (from the Engineer Corps of the Army) are assigned to the care of each district.

Life-Saving Service.

But, spite of chart and light, now and then the storm king drives, or the treacherous fog lures, a vessel upon rock or shoal, and the Treasury Department has a last duty to the seamen, which the Life-saving Service discharges. All along our sea and lake coasts, and especially on the dangerous stretches, there are stations, and between these all night long the patrols pass to and fro in the stormy months, looking for the signals of vessels in distress, and summoning their comrades for the rescue when such signals are seen.

CHAPTER XIII

DEPARTMENTS OF WAR AND JUSTICE

WAR DEPARTMENT ORGANIZED—DUTIES OF SECRETARY—PRINCIPAL OFFICERS—HEADS OF STAFF CORPS—MAKING BIG GUNS—COAST DEFENCES—THE MILITARY ACADEMY—ATTORNEY-GENERAL'S OFFICE—DEPARTMENT OF JUSTICE CREATED—DUTIES OF ATTORNEY-GENERAL—ORGANIZATION OF HIS DEPARTMENT.

MILITARY affairs under the Confederation were first conducted by a Committee of Congress, then by a Board of War, and after 1781 by a Secretary of War. The War Department was established under the Constitution by an Act of Congress of date August 7, 1789, and General Henry Knox, who had been holding the office since 1785, was made Secretary by President Washington. In 1890 Congress provided an Assistant Secretary. Before that there had been none. The larger duties of the Secretary of War are not very particularly described in the statutes. The law reads: He "shall perform such duties as shall from time to time be enjoined on or entrusted to him by the President relative to military commissions, the

Organized in 1789.

Duties of Secretary.

military forces, the warlike stores of the United States, or to other matters respecting military affairs; and he shall conduct the business of the department in such manner as the President shall direct."

The law defining the duties of the Secretary of the Navy runs much in the same terms. The thought of the law-makers seems to have been that as these departments had to do with the organization, equipment, and subsistence of the land and naval forces of the United States, and the movement of troops and ships, and as the President is by the Constitution the Commander-in-Chief of such forces, the action of the heads of these departments must proceed, theoretically, at least, upon the President's direction. "By order of the Secretary of War" is the equivalent of "by order of the President," and perhaps War Department orders should take the latter form. It would obviate in great measure the not infrequent differences between the Secretary and the General commanding the Army. In fact, the Secretary acts in great part upon his own judgment, and only consults the President and takes his directions in important matters.

All of the principal officers of the War Department, except the Secretary and the Assistant Secretary, are army officers, the heads of the sev-

eral staff corps, thus: the Adjutant-General, the Inspector-General, the Judge Advocate-General, the Chief Signal Officer, the Quartermaster-General, the Commissary-General, the Chief of Engineers, the Paymaster-General, the Surgeon-General, and the Chief of Ordnance. Each of these officers has the army rank and pay of a brigadier-general, and conducts his office under the Secretary of War.

Principal officers—Heads of staff corps.

The titles they bear, perhaps, sufficiently indicate their general duties. The Adjutant-General's office has to do with the muster of troops, the organization of the Army, the preservation of the muster in and out rolls, and the various regimental, company, and post returns and reports required by the army regulations; and it is through this office that orders are issued directing the movements of officers and troops. The Inspector-General visits and inspects all military posts, detachments, and prisons, and the Military Academy; reports upon matters relating to the equipment and discipline of the troops, the sanitary condition of the posts and prisons, and examines the accounts of disbursing and issuing officers. The Judge Advocate-General is the military law officer of the department. He receives and reviews the records of army courts-martial, and gives to the Secretary opinions upon law

Their duties.

questions submitted to him. The Chief Signal Officer is the head of the Signal Corps of the Army, and his military duties relate to army signalling, either with the flag (what the soldiers used to call "wig-wag") or the heliograph, and to the construction and use of field telegraph lines. There was added to these military duties a meteorological service, designed to observe and report storms, freshets, and changes in temperature that involve danger to the mariner or to the farmer. This service has now been transferred to the Agricultural Department. The Quartermaster-General is charged with providing practically all army supplies, except arms, rations, and medicines, and these are supplied respectively by the Chief of Ordnance, the Commissary-General, and the Surgeon-General. Upon the engineer officers of the Army important civil duties have been devolved, in addition to those of a military nature. The military duties of the corps embrace the location and construction of fortifications, military bridges, pontoons, etc. The officers of the corps are also employed in the location and construction of lighthouses, and in the important and very extensive works undertaken by the Government for the improvement of harbors and navigable rivers.

The arms, large and small, used by the Army, are generally manufactured and repaired at arsenals

which are under the control of the War Department The most important of these are located at Springfield, Mass., Rock Island, Ill., and West Troy, N. Y. The first two are chiefly equipped for the making of rifles and carbines, and the last for the making of large guns—rifled cannon and mortars. Just now the guns, large and small, heretofore used by the Army, are being exchanged for the long range quick-firing breech-loading modern gun; and the old forts, with their stone walls, are giving way to earth parapets and holes in the ground. Large rifled cannon, carrying projectiles weighing as much as 1,000 pounds, and having a range of thirteen miles, are now being mounted in our new coast-defence works, upon disappearing carriages or platforms, and behind parapets not much above the surrounding surfaces. The range is found and the gun pointed while it is in a pit below the natural surface. The touch of a lever lifts the gun above the surface; it is fired and sinks again into the pit. The old mortar had no accuracy of fire. For a sure mark it needed a city not below the third class. But the new rifled mortar will find a ship's deck, when the ranges have been carefully established. The long neglected work of coast defence is at last begun, and the skill of our accomplished officers

Arsenals—Big guns and mortars.

Coast defence.

of ordnance and of engineers will very soon make secure against hostile fleets the harbors of our great cities. With our coast cities well defended by large guns on shore, and a good fleet in each of the great oceans, the defence of our country will be made good. No hostile army that can be brought to our shores from Europe can penetrate far into our territory. No invader will ever tarry to reap a grain crop. Our commerce will be at risk, but the larger commerce of our adversary will be staked against it. With every port blockaded, our people and our Army would lack for nothing. We should not be dependent on blockade-runners. All these preparations and conditions will promote arbitration, and, better still, the direct adjustment of international differences. What is won in a lawsuit is neither given with grace nor accepted with gratitude. A voluntary surrender of the brutal privilege of killing pregnant and nursing seals for their skins would be a better evidence of good-will than the most touching banquet utterances.

Arbitration.

It has never been the policy of the United States to maintain a large standing army. At the close of the Revolutionary War, when it might have been supposed the Army would have been held in high and grateful appreciation by the people, the popular jealousy and

Strength of our army.

apprehension of the national troops was absurdly intense. Congress refused to authorize the enlistment of eight hundred men to garrison the frontier posts about to be surrendered by Great Britain. McMaster says: "The history of Greece, the history of Rome, and the history of England were then ransacked for examples of the ills of a standing army."[1] The Army of the general Government was disbanded—only eighty men being retained to protect the public stores at Fort Pitt and at West Point. The Army is now limited by law to twenty-five thousand enlisted men. There are five regiments of artillery, of twelve batteries each; ten regiments of cavalry, of twelve troops each, and twenty-five regiments of infantry, of ten companies each. The enlisted men of two regiments of cavalry and two of infantry are colored men, and they have attained a high record for efficiency.

Bureau of information.

The War Department maintains a bureau of information with a view to the collection of all the data necessary to the understanding and solution of every military problem. Arms, rations, transportation, topography, the concentration of troops, the strength and armament of forts, are taken account of, not only as they relate to our own forces and territory but to

[1] McMaster: History of the People of the United States, vol. i., p. 186.

those of a possible enemy. An army and a naval officer are attached to the legations of the United States at the important European capitals for the purpose of observing and reporting things that our military departments should know of new arms or construction or tactics.

Military Academy.

The officers of the Army are chiefly graduates of the West Point Military Academy, though a door is open for the promotion of meritorious soldiers who, as non-commissioned officers, have made a good record and have passed an examination as to their qualifications; and now and then, when there happen to be an unusual number of vacancies, appointments to the grade of second lieutenant are made from civil life. The graduates of the Academy are assigned to vacant second lieutenancies, and, if there are not enough such vacancies, are borne on the rolls as additional second lieutenants until vacancies occur. The corps of cadets at the Academy is composed of one from each Congressional district, one from each Territory, one from the District of Columbia, and ten from the United States at large, and all save these ten must be residents of the districts or territories from which they purport to be appointed. They are all appointed by the President, but those from the Congressional districts and the Territories have by custom for many

years been selected by the representatives and delegates in Congress—each naming the cadet from his district. The cadets receive $540 a year.

Our Army is small, in fact, and minute, when compared with any of the armies of the other great Powers, but under the operation of recent laws relating to enlistments, and of laws intended to protect the rights and promote the self-respect of the private soldier, and to relieve him from assignments to menial duties, the quality and *esprit de corps* of the enlisted men are very high, and the character and military skill of the officers are excellent.

High *esprit de corps.*

There is little call upon the Army now for war service. The Indian wars that for so long kept our troops constantly on the alert, and often in the field, seem to have been ended, and the necessity for maintaining many small and isolated posts for the defence of the frontier settlements to have ceased—now that we have no frontier. The policy of the War Department is now to bring the companies of each regiment together in larger posts.

The use of the Army—either upon the call of a State to preserve the peace of the State, or under the direct orders of the President to suppress resistance to the laws of the United States — has become more frequent of late years, and more than one community has

Used to preserve the peace.

owed its deliverance from the frenzy of a mob to the presence of a small detachment of United States troops—men who will do what they are ordered to do, and nothing without orders. There is no menace to the liberties of the people in our little Army, but its trained and patriotic officers may again, in the case of a great war, as in 1861, become the organizers and leaders of great armies; and, with the little army of trained men they now command, will, within the Constitution and the laws, during our longer years of peace, be the efficient conservators of public order.

THE DEPARTMENT OF JUSTICE.

The Judiciary Act of 1789, which established and defined the jurisdiction of the courts of the United States below the Supreme Court, provided for an Attorney-General.

Attorney-General's office.

The work of the office was for many years not so large as to require the entire time of the Attorney-General. He did not always reside at the seat of Government, and his private practice was not much interrupted by his public duties. His salary was only $1,500 a year. William Pinckney, who held the office under President Madison, continued to reside at Baltimore; and when the law of 1814, requiring

the Attorney-General to reside at the seat of Government, was passed he resigned the office.

The Attorney-General was always a member of the Cabinet, but it was not until 1870 that the Department of Justice was established, with the Attorney-General as its chief officer. The duties of the Attorney-General are: to give his advice and opinion upon questions of law when asked by the President, or by the head of any other department, as to any question of law arising in his department; to examine and report upon the title to lands to be purchased as sites for public buildings; to conduct and argue, with the Solicitor-General, all suits, writs of errors and appeals in the Supreme Court and the Court of Claims, in which the United States is interested; to exercise a supervision over the United States attorneys and marshals of all the districts in the States and Territories, and to require and receive their reports and supervise their accounts, as well as those of the clerks and other officers of the United States courts; to examine and report to the President on all applications for pardon, and to send to Congress annually a report of the business of the department for the preceding fiscal year. The general organization of the department is: a Solicitor-General, who is next in rank to the Attorney-General, and in his ab-

Department of Justice—Duties of Attorney-General.

sence becomes the acting head of the department; four Assistant Attorneys-General and ten assistant attorneys, who do such work as may be assigned to them. These have their offices in the Department of Justice building, and act directly under the orders of the Attorney-General. There are, in addition, the following officers belonging to the Department of Justice, but serving in other departments: a Solicitor and Assistant Solicitor of the Treasury, a Solicitor of Internal Revenue, a Solicitor for the State Department, an Assistant Attorney-General for the Post-Office Department, and one for the Interior Department.

Organization of Department.

The work of the Department of Justice is very large, very responsible, and very various. Many new law questions are constantly arising in the administration of public affairs, and the active litigation, both of a civil and of a criminal nature, to which the United States is a party, is constantly enlarging. The Court of Claims hears claims against the Government—often involving millions of dollars—and the discovery and collection of the evidence for the Government and the presentation of its case demand laborious, intelligent, and conscientious work. Great questions, involving large amounts of money, arise under every new tariff law; and the relations of the Government to the Pacific railways also give rise to important litigation.

CHAPTER XIV

THE POST-OFFICE DEPARTMENT

WHAT ARE POST ROUTES—POSTMASTER-GENERAL NOT IN CABINET UNTIL 1829—MAIL SERVICE IN THE COLONIES—FRANKLIN POSTMASTER AND POSTMASTER-GENERAL—POSTAGE RATES—NEWSPAPERS IN THE MAILS.

THE Constitution gives to Congress the power "to establish Post-Offices and Post Roads;" and the transportation of mail matter has been made by Congress a government monopoly. The carrying of mail matter by any private express or in any manner by stated trips over any mail route, or from any town or place to any other town or place between which the mail is regularly carried, is made an offence. There is an exception allowed in the case of mail matter that is inclosed in stamped envelopes, properly sealed and addressed — which may be sent by express or otherwise. Transportation lines may also carry letters and mail-packets relating to the cargo. The master of every vessel arriving is required before making entry to deliver all letters on board at the Post-Office. The statute declares all the waters

Post-offices and post roads.

What are post routes.

of the United States, during the time the mail is carried thereon, all railroads and canals, and all letter-carrier routes in towns and cities to be "post routes."

Postmaster-General not in Cabinet until 1829.

The Postmaster-General was, in the beginning, regarded as a very unimportant personage. Washington thought the office too insignificant to entitle the holder of it to a place in the Cabinet, and it was not until 1829 that the Postmaster-General was given a seat in the Cabinet. Referring to this low estimation of the office McMaster says:

> Yet there is now no other department of Government in which the people take so lively an interest as in that over which the Postmaster-General presides. The number of men who care whether the Indians get their blankets and their rations on the frontier, whether one company or two are stationed at Fort Dodge, whether there is a fleet of gun-boats in the Mediterranean Sea, is extremely small. But the sun never sets without millions upon millions of our citizens intrusting to the mails letters and postal-cards, money-orders and packages, in the safe and speedy delivery of which they are deeply concerned.[1]

It is essentially a business department, and requires for its successful administration a trained

[1] McMaster: History of the People of the United States, vol. xxi., p. 58.

business man, who knows the significance of every hour saved in the transmission of a letter.

Postmaster-General Wanamaker expressed the true idea of the service thus: "I want to keep the mail-bag open to the latest possible minute, then get it to its destination in the shortest possible time, and then get each separate piece of mail to the person for whom it is meant in the quickest possible way." Perhaps more than any other of the executive departments its growth measures the growth of the country. Its daily transactions give us a pretty sure indication of the state of our commerce.

The true aim of the service.

The Post-Office Department was organized, under the Constitution, in 1789, and more permanently established and settled in 1794. In the very early Colonial times letters went by the hands of special messengers when of the highest importance, but usually by the hands of casual travellers, or of accommodating captains of coasting vessels. When population increased and commerce could no longer depend on casual opportunities, posts were established and riders despatched when enough letters to pay the cost had been accumulated. Finally the mother country introduced a limited postal system in the American Colonies.

First mail service.

The story of the origin and development of the

postal service in America is one of great interest, but cannot be pursued here. The aid given by that service, feeble and imperfect as it then was, to the cause of independence and of the union of the States, to the military campaigns of the Revolution, and to the opening and development of the great West, was of the highest value. Mr. C. W. Ernst, of Boston, has contributed some valuable articles to *L'Union Postale* upon this subject, and from them some of the facts stated here are derived. In 1692 William and Mary granted to Thomas Neale a patent to establish a postal service in the American Colonies. Neale placed Andrew Hamilton, of New Jersey, in charge of the business, and he established a post from Portsmouth, N. H., to James City, Va., in May, 1693. He procured from the colonies the necessary legislation, and from some of them subsidies. The service was afterward (1710) resumed by the Crown, and it is a curious fact that the first general postal law "prohibited political agitation on the part of postal officers." Of this early postal service Mr. Ernst says:

An interesting story.

Royal grant to Neale.

> The Postmaster-General of America received an annual salary of £200, and whatever he saw fit to charge for the transmission of newspapers. Postmasters received a percentage of their gross receipts, and usually

had the official frank. This led them generally into the business of publishing newspapers. The mail-riders, who were a sort of travelling post-office, treated everything as a perquisite, except the letters charged to them by postmasters.

Compensation of Postmaster-General—Newspapers.

In his Autobiography Franklin says:

> In 1737 Colonel Spotswood, late Governor of Virginia, and then Postmaster-General, being dissatisfied with the conduct of his deputy at Philadelphia, . . . took from him the commission and offered it to me. I accepted it readily, and found it of great advantage; for, though the salary was small, it facilitated the correspondence that improved my newspaper, increased the number demanded, as well as the advertisements to be inserted, so that it came to afford me a considerable income. My old competitor's newspaper declined proportionately, and I was satisfied without retaliating his refusal, while postmaster, to permit my papers being carried by the riders.

Franklin Postmaster at Philadelphia.

The Postal Service has not lost the characteristics revealed by this early incident; small post-offices and small newspapers still exhibit an affinity for each other, and the rival newspaper still complains of injurious discriminations. It was not until 1782 that newspapers were received as mail matter.

In 1753 Benjamin Franklin and William Hunter were appointed Postmasters-General upon the

terms that they were to have £600 a year between them if they could make so much out of the office.

Franklin and Hunter Postmasters-General.

It seems from Franklin's account that during the first four years they expended £900 more than they received. After that the revenues improved and the office became a paying one and yielded a not inconsiderable surplus to the Crown.

The first transatlantic mail service was established by the British Post-office in 1755, by a packet from Falmouth to New York. Franklin was deprived of his office in 1774, and in December, 1775, the Royal Post in the Colonies was abandoned, the Colonial Congress having in the previous July appointed Franklin Postmaster-General for the Colonies.

First ocean mail service.

In Washington's first term an effort was made to speed the mails—to move them at the rate of one hundred miles in twenty-four hours, or a little less than four and a half miles an hour. The carriers were then taking nearly thirty hours between Philadelphia and New York. The roads were bad and there were many slow ferries. What a contrast! How slow the fast things of our fathers appear to us. The special mail trains now run at the rate of forty or fifty miles an hour; mails are taken up and delivered without stops, and are sorted and put up

An effort to speed the mails.

in the postal-cars so as to go on their way without going to distributing offices. In 1776 there were only twenty-eight post-offices in the Colonies; in 1795 there were four hundred and fifty-three, and in May, 1897, there were 70,723.

The rates of postage when the department was organized under the Constitution were high: for thirty miles, six cents for one letter-sheet; for sixty miles, eight cents; for one hundred miles, ten cents, and so increasing with the increased distance to the maximum, twenty-five cents for distances over four hundred and fifty miles. First postage rates.

Envelopes were not in use in those days, and the letters were so folded that the number of sheets could be ascertained. Neither were stamps in use, nor was the sender of a letter required to pay the postage in advance. The postage, six cents or twenty-five cents, as the case might be, was written by the postmaster on the letter, and if the sender paid the postage the word "paid" was added; if he did not, the postage was collected of the person to whom the letter was addressed. These rates soon yielded a surplus over the cost of the service, spite of the franking privilege which the law gave to congressmen and the heads of departments. But with larger public revenues from other sources the policy of making net Not the policy to make net revenue.

revenues from the Postal Service was abandoned, and for many years the policy has been to extend and improve the service, and to reduce postal-rates, even at the cost of large annual deficits, to be made good from the Treasury. The scattered frontier settlements have been provided with mail facilities, even when the cost of the service was several hundred times more than the receipts. A letter weighing one ounce is now carried to any post-office in the United States for a uniform rate of two cents.

Book and newspaper postage.

The demand of the newspapers and periodicals of every class for cheap newspaper postage, seconded by their subscribers, has led to a reduction of rates greatly below the actual cost to the Government. In his report for 1892 the Postmaster-General, after stating that the present letter-rate pays twice the cost of the letter-mail, says that the book and newspaper mail is carried at a loss of six cents a pound.

If the book and newspaper matter paid the actual cost of distribution and the other departments of the Government paid the regular postage upon the letters and other matter sent by them through the mails—which is now carried free—the Post-Office Department would show an annual surplus, instead of an annual deficit.

CHAPTER XV

THE POST-OFFICE DEPARTMENT (CONTINUED)

ORGANIZATION—FREE DELIVERY—MONEY ORDERS—REGISTRY—STAR ROUTES—OCEAN MAIL SERVICE—THE TELEGRAPH—FOREIGN MAIL.

IN recent years the Post-Office Department has been characterized by a very progressive spirit, and it is now rendering, not a perfect service, but a high-class service. No other department has more nearly kept pace with the marvellous development of our country.

Only a very brief notice of a few of the most interesting subdivisions of its work is possible here.

There are four Assistant Postmasters-General, and to each of them is assigned the supervision of specified divisions of the Department. These assignments rest so largely in the discretion of the Postmaster-General and are so frequently modified that a statement of the existing classification would be of little value. But a list of the divisions, which are somewhat permanent, will give a general view of the scope of the work. They are: Division of Post-Office Supplies, Division of Free Deliv-

Department organization.

The divisions.

ery, Division of Salaries and Allowances, Division of Correspondence, of the Money Order System, of the Dead Letter Office, Contract Division, Division of Railway Adjustment, Division of Inspection, Division of Mail Equipment, Office of Railway Mail Service, Office of Foreign Mails, Finance Division, Postage-stamp Division, Registered Letter Division, Division of Files, Mails, etc., Division of Mail Classification, Division of Appointments, Division of Bonds and Commissions, Division of Post-Office Inspectors and Mail Depredations.

There is a corps of inspectors under the chief of that division and their duties are to examine the post-offices as to their management and accounts, to look into and report upon all complaints and irregularities, and to pursue and cause the arrest of all violators of the postal laws.

Classification of mail matter.

Mail matter is divided into four classes: First, letters, postal-cards, and all matter partly or wholly in writing; second, newspapers and other periodical publications, issued at stated intervals, and at least four times a year; third, books, transient newspapers, periodicals, and other printed matter, proof-sheets, and the manuscript copy of the same; fourth, all other packages not exceeding four pounds in weight, excluding, however, anything that is liable to injure other mail matter or to harm those handling the

mails. The limit of weight does not apply to single books, or to Government publications, or to any matter sent by one of the Executive departments.

The free collection of mail matter, several times a day, from deposit-boxes, so thickly scattered over our cities that one may reach them in his slippers, and the free and frequent delivery of mail at our doors, is a wondrous advance over the time, not yet old, when those who spent the day in the home had to commit their letters to the inside pockets of unofficial, and often unfaithful, carriers, and those who worked in offices or shops had to go or send messengers long distances to deposit and receive their mail, and it may be, to stand a half hour in line before a general delivery window. It has recently been proposed, and the experiment is being tried, to make the collections from the mail-boxes by wagons making continuous instead of stated rounds, and provided with a mail clerk and appliances for assorting the mail collected, and sending outgoing mail matter directly to the proper railway station.

Free delivery and collection.

The postal laws punish very severely any interference with the mails or the mail carriers. The coatless post-boy on his cart is the "King's man," on the "King's errand." The mail packages, when once deposited in a post-office, mail-box, or car, must not be touched but by offi-

The "King's man" on the "King's errand."

cial hands, and these must not detain them or pry into their contents. Letters or printed matter of an indecent character, or intended to defraud others, and lottery advertisements are not mailable, and the persons sending such matter are liable to arrest.

Money-order system.

The domestic money-order system, now so familiar to all, was inaugurated in 1864 and has been extended to the smaller offices, until there are now about twenty thousand offices where such orders can be procured. A foreign money-order system was authorized in 1868. In the fiscal year ending June 30, 1896, the total value of the domestic money-orders issued was $172,100,649.02; and of the foreign money-orders $13,852,615.74. These foreign money-orders went to thirty-three countries. There are now (1897) thirty-five countries with which "Conventions" exist for the transaction of money-order business. How neighborly the world is coming to be. A Swede goes to a little post-office in North Dakota, hands to the postmaster $100 (the limit) and takes from him a paper that requests the postmaster at Malmo, Sweden, to pay $100 to the mother of the sender. The Swedish officer has received no money from the Dakota postmaster, nor has he any money of the United States in his care, but the order is promptly paid. Not

Foreign money-orders.

these small officials, but two great governments, are the actors in this small but beneficent transaction. The money-order balances are largely against the United States and are settled by foreign bills of exchange purchased by the Post-Office Department — sometimes to the amount of ten millions of dollars annually. For some years the law authorized the issuing of "postal notes." These were limited to sums under $5 and were payable to bearer. The law was repealed in 1894.

Balances against us.

Another method of transmitting, by mail, money, bonds, or other articles of value, is by the registered letter. Mr. Cushing, in "The Story of the Post Office," gives this description of the registry system:

Registered letters —the system.

> Every person to whom the custody of a registered article is entrusted must make a record of it, give a receipt for it when it is received, and take a receipt when he parts with it. To handle each registered piece separately would require a very large force of postal clerks, while between some points, no matter how large the force, owing to the limited time in transit, it would be impossible to give and take the usual receipts and make the necessary record. To overcome this difficulty the registered pouch and inner sack systems were introduced. In the pouches passing between given points are placed all the registered articles that would ordinarily pass to the office to which the pouches are dispatched. These

pouches are locked, as has been said, with rotary or tell-tale locks, that indicate when they are opened. Each pouch is handled as a single registered article and is receipted for by the label it bears and the serial and rotary numbers of the lock with which it is fastened. It may contain fifty or more articles, but the postal clerk who receives it counts it as a single piece. Its contents, when enclosed, are first carefully verified by two pouching clerks, and again by two witnesses when the pouch is opened at its destination. Nothing can be removed in transit without changing the rotary number of the lock; and as each person who receives the pouch is obliged to receipt for it by the rotary, as well as the serial, number of the lock, it can readily be ascertained who, if anybody, opens the pouch. The postal clerks are not permitted to have keys to open the rotary locks; these are furnished only to postmasters who exchange registered pouches.

The United States does not indemnify the sender if a registered package is lost. England, Germany, and some other countries do, within a fixed limit.

The Dead Letter Office, always an object of curious interest to visitors, collects the unsolved puzzles from all the post-offices, and by hook or by crook gets the unclaimed letter to its destination, or returns it to the sender.

Dead Letter Office.

The Railway Mail Service is the centre and strength of the whole postal system, and has been brought to a high state of proficiency. Each mail-car is a post-office, and all night long on hun-

dreds of such cars faithful men are separating and assorting mail matter in order to hasten the delivery of our letters. The country is divided into districts, and a Superintendent of the Railway Mail Service is assigned to each. The railway postal clerks are under the civil service law, and in addition to the entrance examination, are subjected to frequent further examinations to test their accuracy in mail distribution. Every error made in the distribution of mail matter is reported, and the official life of a negligent or incompetent man is now very brief.

Railway Mail Service.

We have heard much about the "Star Routes," but few people know what they are, or why they are so called. They are the mail routes—other than the railroad and steamboat routes—upon which the mails are carried by riders, stages, wagons, or other like means. The contracts do not specify the particular method to be used, but require that the service shall be performed with "celerity, certainty, and security." In the report of the Postmaster-General for 1896 this account is given of the origin of the term "star routes:" "Bids for such service were thereafter classified as 'celerity, certainty, and security' bids, from the distinguishing words of the statute, and presumably to avoid the constant writing out of these words in the books of this

Star Routes.

office, the clerks of the contract division designated them on the route registers by three stars (* * *), and they became known as 'star bids.'"

Sorting mails on the ocean.

On some of the transatlantic mail steamers sea post-offices have been established. A postal clerk is detailed by each of the nations between whose ports the vessel plies, and these during the voyage assort the mail just as the railway mail clerks do. Packages or pouches are made up for the city sub-stations and for the railroad lines. Until the passage of the act of March 3, 1891, the compensation allowed to American vessels for carrying foreign mails was the sea and inland postage on the mail matter actually carried. By the Act of 1891 an attempt was made to encourage the establishment in the foreign trade of American steamship lines using vessels of American build, owned and officered by American citizens, and manned by crews having a fixed proportion of American seamen. The vessels are to be constructed under the supervision of a naval officer, and to be adapted to easy conversion into armed cruisers, to have a fixed speed — those of the first class twenty knots an hour—and a designated tonnage, the first class not less than eight thousand tons. The Government has the right to take the vessels for public uses at any time upon paying the approved value thereof.

Sea postage—The American Line.

The mail pay is as follows: to vessels of the first class, not more than four dollars; to those of the second class, not more than two dollars; to those of the third class, not more than one dollar; to those of the fourth class, not more than two-thirds of a dollar per mile travelled on each outward voyage. The great governments of Europe had long given mail or other subsidies to their great ocean steamship lines, and the United States had no choice but to follow their example, or to remain content that no great ocean steamship should carry our flag. Under the law of 1891 the American Line, between New York and Southampton, has been established and is inferior to none of its great competitors.

The use of the telegraph in the mail service has been proposed by the department and by bills presented in Congress. The suggestion does not necessarily involve government ownership of the lines, but only the use of the commercial lines under contracts for the conveying of messages between post-offices, just as the railroads now carry letters. Mr. Ernst, referred to above, states that the first experimental telegraph line between Washington and Baltimore, built in 1844 by the United States under the direction of Morse, was managed by the Post-Office Department until it was sold, a few years later.

The telegraph in the mail service.

The Postmaster-General is authorized, by and with the consent of the President, to conclude postal treaties with foreign countries. Under this power, in 1891, the United States became a party to a convention signed by the representatives of over fifty distinct powers, including all of the great Powers and their dependencies, and very many minor ones, revising the previous conventions, and establishing, under the name of the "Universal Postal Union," a single postal territory for the reciprocal exchange of articles of correspondence between their post-offices. A uniform rate of postage which can be prepaid to destination is fixed, and every facility of their mail system is extended by each country to the mails of all the others. An accounting takes place at stated intervals to adjust the balances. The Universal Postal Union is not only a great agency for the promotion of commerce, but by facilitating the exchanges of thought is a potent agency in the promotion of peace and good-will.

The Postal Union.

CHAPTER XVI

THE NAVY DEPARTMENT

THE OLD NAVY — BUILDING SHIPS AND MAKING GUNS — NAVY YARDS—MILITIA—APPRENTICES—DEPARTMENT CREATED—ORGANIZATION—NAVAL GRADES—PROMOTIONS — RETIREMENT—ENLISTED MEN.

THE Navy of the United States has had a renaissance, and our people have hailed it with patriotic joy. Before the time of steam ocean navigation the merchant marine of the United States was the pride of the seas, and our war vessels second to none in construction, sailing qualities, armament, or in the seamanship, dash, and intrepidity of their commanders and seamen. At the breaking out of our Civil War the navy of the United States consisted of seventy-six vessels of all classes. To make our blockades safe against the protests of jealous and unfriendly European powers and their blockade runners, to chase the rebel cruisers which England had wantonly or negligently let loose upon the seas, to assault rebel harbor forts, and to open our great rivers, the United States was compelled to construct large war fleets. At the close of the war we had about six hundred vessels of all grades.

The old navy.

The monitor type of war-ship — designed by Ericsson, and so speedily tested in action in Hampton Roads—introduced ideas which have entered into all modern naval construction—iron or steel hulls, defensive armor and revolving turrets for the main battery. We built other monitors, and they did good service, but they were not regarded as safe sea vessels, and at the close of the war were generally put out of commission. Our wooden ships were patched and reconstructed at a very great annual cost, but ship by ship they were stricken from the register, until in 1892 we had only twelve such available for cruising purposes.

Ship-building and gun-forging.

In the meantime the naval constructors and gun-makers of Europe were working out, through costly experiments and many failures, the modern armored cruiser and battle-ship, and the modern high-power gun. We entered in a measure into their labors and had the profit of their mistakes. In 1883 the foundation of our new Navy was laid by commencing the building of four cruisers, of which the "Chicago" was the most important. We had no great ship-yards, and no ship-builders with the capital, the skilled labor, and the experience to fit them to enter this new field. John Roach, however, had the courage to believe that he could create a competent shop and build the new vessels. He put everything at

risk and should have had better treatment from the Government than he received. He was fairly entitled to some of the profits that have since accrued to those who have walked in the path he blazed. We have now, both on the Atlantic and Pacific, ship-yards and builders capable of constructing any ship and of putting into her machinery of the first efficiency. We have also great steel plants, costing millions of money and capable of making armor-plates of the highest resisting power, and steel gun forgings of the finest quality. These great ship-yards and steel plants are convincing proofs that the supremacy we once had in wooden ship-building may be attained—if it has not already been attained—in steel ships. I suppose one of our old clipper-ship builders could not have been persuaded that such a ship as the "Indiana" would float. Paul Jones's construction was offensive, not defensive, and his battle plan was to get more shot into his adversary than he took in himself. His guns had only a little greater range than his trumpet, and between broadsides the contending captains sometimes exchanged lurid phrases. If a sail or a yard were shot away it was restored under fire or another made to do its work. But now if a shot gets into the engine-room it is a case for a navy-yard, with a strong probability that it will be the enemy's

Paul Jones's battle plan.

yard, for our great battle-ships carry no sails—the power is steam and the ship is full of machinery. And so armored sides, and turrets for the big guns came in, and the contest still continues between the resisting power of steel plates and the pounding and piercing power of great guns. The projectiles have now a range greater than the eye that trains the guns, and a weight and explosive force that demand their exclusion. The gun-shop at the Navy Yard in Washington, which has been built under the supervision of naval officers, and conducted by them, is making guns that may safely be put into action against those of any navy in the world. The Harveyized nickel-steel armor-plates, made under contract with private parties for our ships, are certainly unsurpassed and probably unequalled by the product of any foreign mills.

Navy gun-plant.

Practically all of this work has been done within ten years, and the Secretaries of the Navy who have presided over and directed it, the constructors and ordnance officers of the Navy who have largely furnished the designs, and the steel-makers and ship-builders who have executed these plans, are entitled to the highest praise. We have always had a navy personnel to be proud of, and we now have a Navy to be proud of—not a finished Navy, but one on the way. A

Good ships and good *esprit de corps.*

new battle-ship is a new argument for international arbitration—for you must have noticed that peremptory demands for fixed amounts of damages are usually made upon nations that have no battle-ships or torpedo-boats. It is not our purpose to match the great navies of Europe. We may safely keep our register of vessels well within theirs; but we do not intend again to leave the sea.

Navy-yards.

There are navy-yards at Portsmouth, N. H., Boston, Mass., New York, League Island (near Philadelphia), Washington, D. C., Norfolk, Va., Pensacola, Fla., New London, Conn., and Mare Island, Cal. Those at New York and Norfolk are equipped for building modern vessels of war. The "Maine" was built at the New York yard, and the "Texas" at the Norfolk yard. But the construction of ships by contract with private ship-yards has been found more satisfactory, and work at the navy-yards is now limited to docking and repairs. There are dry-docks at New York, at Port Royal, S. C., at Puget Sound, and at Mare Island.

Naming ships.

A resolution of Congress passed in 1819 directed that sailing ships of the first class should be named after the States, those of the second class after the rivers, those of the third class after the chief cities and towns, and those of the fourth class as the President might

direct. A later law provides that steamships of the first class shall be named after the States, those of the second class after the rivers and principal cities and towns, and those of the third class as the President may direct.

The naming of our ships after the States and cities has done much to stimulate an interest in the Navy among those whose inland homes are beyond the range of the biggest guns; and the organization of a naval militia in the lake and seaboard States will give war strength and will increase the consideration in which the Navy is held.

Naval militia.

Old naval vessels are loaned to the States for the use of the naval militia, and once a year the detachments are taken to sea for practice on some of the modern vessels.

The Navy Department was created April 30, 1798. Before that time the War Department had charge of both the sea and the land forces—as its name might imply. Perhaps its name should have been changed to the "Army Department" when the Navy Department was created. "The Secretary of the Navy shall execute such orders as he shall receive from the President relative to the procurement of naval stores and materials, and the construction, armament, equipment and employment of vessels of

Department created.

war, as well as all other matters connected with the naval establishment." So the law runs.

There is an Assistant Secretary of the Navy, and the department is divided into eight bureaus, viz.: Yards and Docks, Equipment and Recruiting, Navigation, Ordnance, Construction and Repair, Steam Engineering, Supplies and Accounts, and Medicine and Surgery. The heads of these bureaus are naval officers. They are appointed by the President from certain naval grades prescribed by law, must be confirmed by the Senate, and have, while acting as such, the relative rank of commodore. The names of these bureaus sufficiently indicate the lines upon which the work of the department is divided. Since the building of new ships was begun the Secretaries of the Navy have had great labor and great responsibility imposed upon them, and these have been further increased by the recent complications in our foreign affairs. Warships re-inforce diplomatic demands and protests, and naval orders have a close relation to diplomatic forecasts. As a consequence the relations between the Secretaries of State and of the Navy are peculiarly close and confidential. Organization.

The grades in the line of the Navy are these: Rear admirals, commodores, captains, commanders, lieutenant-commanders, lieutenants, lieu-

tenants, junior grade, ensigns, and naval cadets. The grades of admiral and vice-admiral, corresponding to the army grades of general and lieutenant-general, are not permanently maintained. These grades were created by law in recognition of very distinguished services in the Civil War, and after the officers for whom these honors were intended had been appointed, further appointments to these grades were prohibited. There have been but two admirals on our navy-rosters, viz.: Farragut and Porter; and but three vice-admirals, viz.: Farragut, Porter, and Rowan.

Naval grades—The line.

The naval staff consists of the following grades: In the Medical Corps—medical directors, medical inspectors, surgeons, passed assistant surgeons, and assistant surgeons; in the Pay Corps—pay directors, pay inspectors, paymasters, passed assistant paymasters and assistant paymasters; in the Engineer Corps—chief engineers, passed assistant engineers, and assistant engineers. There are also naval constructors, assistant naval constructors, chaplains, professors of mathematics, and civil engineers on the Navy Register. The warrant officers are boatswains, gunners, carpenters, sailmakers, and mates. They are appointed by the President.

The staff.

Promotions in the Navy are by seniority in all

grades, but before any officer can be promoted from one grade to another he must pass an examination as to his mental, moral, physical, and professional fitness for service in the higher grade. Promotions.

The law retires all officers of the Navy when they reach the age of sixty-two years, or upon their own application after forty years' service. In the Army the age limit is sixty-four. If retired upon reaching the age limit, or for injuries or disability incurred in the line of duty, the officer receives seventy-five per centum of the sea-pay of the grade held by him at the time of retirement. Disabled officers may be retired upon a medical examination. A retired officer is still carried on the Navy Register, and may be called upon for duty if occasion requires. Retirement.

The enlisted men of the Navy are classed as petty officers, seamen, ordinary seamen, landsmen, apprentices, and firemen. The total number of enlisted men, as fixed by the law of 1893, was nine thousand; but in 1895 the enlistment of an additional one thousand was authorized. A full crew for such a vessel as the "Indiana" or the "New York" would number, officers and men, about five hundred. Enlisted men, number of.

A large number of boys are enlisted in the Navy as apprentices. They are instructed in school-

ships, not only in seamanship, but in the usual elementary school work, and are now beginning to supply the demand for American crews for our war-ships. Special favors are shown them in the selection of warrant officers.

Apprentices.

CHAPTER XVII

THE NAVY DEPARTMENT (CONTINUED)

MARINE CORPS—DUTIES OF REVENUE MARINE—HYDROGRAPHIC OFFICE—NAVAL ACADEMY—APPOINTMENT OF CADETS—ASSIGNMENT OF GRADUATES—NAVAL WAR COLLEGE—TORPEDO STATION—PRIZES AND PRIZE MONEY.

THE Marine Corps is an amphibious organization—a connecting link between the Army and Navy; though in its organization the army likeness predominates. Marines are of very ancient use in naval warfare. They were at the beginning the armed men of the crew, the sailors attending chiefly to the movements of the ship. But now the sailors man the guns and use the cutlass and the rifle. The Marine Detachment, or guard, as it is called, on one of our first-class ships usually numbers from sixty-five to eighty-five men; while the crew proper—sailors, landsmen, and apprentices—numbers from four to five hundred men.

Marine Corps.

The Marine Corps was organized under a resolution of Congress in 1775—two battalions being provided for—and was reorganized in 1798. The second lieutenants of the corps are now appointed

from the graduates of the Naval Academy. The corps consists of twenty-five hundred privates and over five hundred non-commissioned officers and musicians. The commissioned officers of the corps are one commandant, with the rank of colonel, one colonel, two lieutenant-colonels, four majors, one adjutant and inspector, one paymaster, one quartermaster with the rank of major, two assistant quartermasters with the rank of captain, twenty captains, thirty first lieutenants, and thirteen second lieutenants. The corps is not divided by law into companies or regiments, but may be divided into companies or detachments by the President with a proper assignment of officers, and may be used in any shore duty to which the President may assign it. It is a useful naval adjunct, though many naval officers think that the marines should not be assigned to duty on board ship. On shore they do guard duty at the navy-yards, and while on ship-board they perform guard and police duties principally. They are armed with rifles, and the drill is generally that of the Army, though they are also drilled at the ship's battery. They are the ship's sharp-shooters. No officer of the Marine Corps can take command of a navy-yard or of a ship.

Organized in 1775.

Officers of corps.

Duties of corps.

The Marine Band which is stationed at the

Navy Yard at Washington is composed of non-commissioned officers, musicians, and privates of the Marine Corps, and each receives a small additional monthly allowance.

Marine Band.

The Treasury Department has now quite a fleet of small but very stanch vessels organized to assist in the collection of the customs duties, to aid vessels in distress, and the like. These vessels may, by order of the President, at any time be ordered to co-operate with the Navy. In addition to the regular United States flag borne at the peak, they carry, as a special designation of the character of the vessels, another flag, the stripes of which run vertically instead of horizontally. Formerly their officers were selected from civil life, but provision is now made by which naval cadets may be appointed to third lieutenancies in the service.

Revenue Marine.

Officers of.

There is a hydrographic office in the Navy Department for the preparation and publication of mariners' charts and sailing directions. These are supplied to Government vessels and sold to others who desire them.

Hydrographic office.

The Naval Observatory is also under the direction of the Secretary of the Navy. It is modelled after the Greenwich Observatory in England, and its work relates chiefly to navigation. The Ephemeris

and Nautical Almanac are compiled and published by a naval officer or a professor of mathematics.

The Naval Academy.

The Naval Academy at Annapolis is also under the direction of the Secretary of the Navy. It had its origin, not in any specific appropriation by Congress, but in Navy Department orders, issued by George Bancroft, Secretary of the Navy under President Polk. Using the general appropriations for the naval service to defray the cost, and an old military post at Annapolis for headquarters, he assembled the midshipmen who were not at sea, and instituted a school. Congress responded to his request for further appropriations, and the Naval Academy was soon upon an assured basis. The law provides for the appointment of one naval cadet from each Congressional district, one from each Territory, one from the District of Columbia, and ten at large. Those from the Congressional districts and from the Territories are appointed as vacancies occur upon the recommendation of the Representatives or delegates, if such a recommendation is made before July 1st; and if no recommendation is made to fill a vacancy from a district or Territory the Secretary of the Navy makes the nomination, but the person selected must reside in the district to which the vacancy appertains. The appointments at large and from

Appointment of cadets.

the District of Columbia are made by the President, the former without reference to locality, but usually from among the descendants of army or navy officers. When a class at the Academy begins its fourth year it is separated into two divisions, according to the aptitudes of the cadets, and in the proportion of the vacancies during the preceding year in the lowest grades of the line of the Navy and Marine Corps and of the Corps of Engineers respectively. After the separation is made, the course of study of each division is specially adapted to preparing the cadets for the duties they are expected to assume upon graduation. When a class is graduated the cadets are assigned in the order of their academic standing, to the existing vacancies in the lowest grades of the line of the Navy and Marine Corps and of the Corps of Engineers.

Cadets at large.

Assignment of graduates.

A Naval War College and a torpedo station are maintained on islands in Newport (R. I.) Harbor. Officers of any grade, below that of commodore, may be ordered to either of these schools for instruction. The schools are distinct, but are both under the command of the President of the War College. At the torpedo station instruction is given in the construction and use of torpedoes, and at the War College in naval tactics and war problems generally.

Naval War College and torpedo station.

A discussion of the naval service would not be complete without some reference to prize money.

Prizes and prize money.

In time of war, when a vessel of the enemy, or a vessel liable to capture for carrying contraband goods, or running a blockade, is captured by one or more of our armed vessels, the captured vessel is sent to a convenient port and the question is tried in a prize court whether it is a lawful prize. If the vessel is condemned, it is sold—if not taken by the Government; and if taken by the Government, an appraised value is paid into the court. Vessels that are within signal distance of the vessel making the capture, and in a condition to render effective aid, are entitled to share in the prize money. When the prize vessel is of superior or equal force to the naval vessel or vessels making the capture, the entire net proceeds go to the captors. If the prize is of inferior force, one-half of the proceeds goes to the United States—except that in case of privateers and letters of marque, the whole proceeds go to the captors, unless the commission of the captor provides otherwise. The prize money due to the vessel or vessels is distributed on a scale prescribed by the statute. The admiral, division commanders, fleet captain, and the commanders of vessels take certain liberal fractions, and the residue is distributed among all others doing duty on

board and borne on the ship's books, in proportion to the rate of service pay of each. Property taken on the inland waters of the United States is not regarded as maritime prize. In 1862 it was enacted that all money accrued or accruing to the United States from the sale of prizes should remain forever a fund for the payment of naval pensions.

CHAPTER XVIII

THE DEPARTMENTS OF THE INTERIOR AND OF AGRICULTURE

DEPARTMENT OF INTERIOR ESTABLISHED 1849—VARIETY AND IMPORTANCE OF WORK—THE PUBLIC LANDS—HOW ACQUIRED, SURVEYED, AND SOLD—HOMESTEAD LAW—MINES AND MINER'S LAW—CENSUS OF POPULATION, WEALTH, AND INDUSTRY—THE INDIANS — NO MORE TREATIES — LANDS IN SEVERALTY—SCHOOLS—INDIAN TERRITORY—PENSIONS—PATENTS—EDUCATION — GEOLOGICAL SURVEY — AGRICULTURAL DEPARTMENT CREATED IN 1862—MADE AN EXECUTIVE DEPARTMENT IN 1889—ORGANIZATION—WORK OF.

THE Department of the Interior was established by the law of March 3, 1849. The duties assigned by this law to the Secretary were: the supervision of the General Land Office—until then under the Secretary of the Treasury; of the Patent Office; of the accounts of the marshals and other officers of the courts of the United States; of the office of Indian Affairs; of the Pension Bureau; of lead and other mines; of the public buildings, and of the penitentiary of the District of Columbia. The Secretary is now charged with these further duties: the custody and distribution of public documents; the supervision of the Architect of the Capitol; of the

Department established 1849. Subjects in charge of.

Bureau of Education; of the Geological Survey; of the land grant railroads; of the Territories; of the Yellowstone, Hot Springs, and other parks and reservations; of the Hospital for the Insane, and the Asylum for the Deaf and Dumb in the District of Columbia. The supervision of the officers of the United States courts and of the penitentiary has since been transferred to the Department of Justice, and that of public buildings to the Treasury Department.

Variety and importance of.

The Interior Department is now, in the variety and importance of the business committed to it, one of the greatest of the executive departments. Perhaps no one of the secretaries, unless it be the Secretary of the Treasury, is so pressed and cumbered with business as the Secretary of the Interior. His work is not single, as in most of the departments, but diverse and multifarious; and only a strong and versatile man can conduct it successfully. The Secretary must pass finally in the department upon questions of patent law, pension law, land law, mining law, the construction of Indian treaties, and many other questions calling for legal knowledge, if the judgment of the Secretary is to be of any value. There is an assistant attorney-general assigned to the department, and the Secretary may call upon the Attorney-General for his

opinion upon important matters, but there is hardly an hour in the day that does not present some legal question, and very often the Secretary must sit as an appellate judge, hear arguments and render decisions.

The public lands.

The control of the public lands was, in the early days when "Uncle Sam's farm" covered practically all the lands save those embraced in the boundaries of the original thirteen States, a great and laborious trust. The original States succeeded to the vacant and unappropriated Crown lands within their respective boundaries, but finally ceded to the United States, for the common benefit, the great West, which the vague and conflicting boundaries of some of their charters seemed to include. Kentucky was organized out of territory claimed by Virginia; Maine out of territory claimed by Massachusetts, and Vermont out of territory claimed by both New York and New Hampshire; so that in these three States, as in the original thirteen, the United States acquired no public lands. The entire area of Tennessee was public domain, being part of the territory south of the Ohio ceded by North Carolina to the United States, but all of the lands therein, save certain lands reserved by the deed of cession, were given to the State. Texas was an independent Republic before it became by treaty

a State of the Union, and by the treaty (1845) the public lands were reserved to the State. All of the other States were public land States, in the sense that they contained public lands; but in some of them, especially in those organized out of territory derived from Mexico, there were antecedent grants of large tracts to individuals whose titles were established by the treaties.

The title of the United States to this vast domain was acquired by cessions from certain of the original States, as to the lands in the States of Ohio, Indiana, Illinois, Michigan, Wisconsin, and Tennessee, and parts of Minnesota, Alabama, and Mississippi; by purchase from France (1803) as to those of Louisiana, Arkansas, Kansas (except the southwest corner), Missouri, Iowa, Nebraska, Oregon, North and South Dakota, Montana, Idaho, Washington, and Indian Territory, and those portions of Alabama and Mississippi south of the thirty-first parallel, Minnesota (west of the Mississippi River), and parts of Colorado and Wyoming; by purchase from Spain as to those of Florida; by conquest from Mexico (Treaty of Guadaloupe Hidalgo, 1848), subject to many Spanish and Mexican grants, as to the territory now embraced in the States of California, Nevada, Utah, and parts of Arizona, New Mexico, and Colorado—aggregating 522,568 square miles;

How acquired.

by purchase from Texas (1850) as to some lands now included in Wyoming, Kansas, Colorado, and New Mexico, and in the public land strip north of the "Pan Handle" of Texas; by purchase from Mexico (Gadsden Treaty, 1853) as to some of the lands now included in Arizona and New Mexico, and by purchase from Russia (1867) as to the lands in Alaska. So that, first and last, the United States has owned in fee simple about 2,889,175 square miles of land, or about 1,849,072,587 acres; has sold or given away over a billion acres, and now has about five hundred million acres left. Very little of the unappropriated public land is adapted to crop raising without irrigation.

The General Land Office.

The General Land Office was created in 1812, under a commissioner, as a bureau in the Treasury Department. Before that time the sales of lands had been in the immediate charge of the secretary of that department, but afterward he had a supervising control only, until the Land Office was (1849) transferred to the Interior Department.

Early land sales.

Some land warrants, which could be located on the public lands, were given to soldiers, and large grants were made to aid the construction of railroads and for public uses in the States; but up to the passage of the Homestead Law, in 1862, the general policy of the Gov-

ernment was to sell the public lands, and for many years this was an important source of revenue. At the beginning the sales were in large tracts, and chiefly to speculators, who re-sold them in smaller parcels. The grant to the Ohio Company, in 1787, contained 822,900 acres, and that to John Cleves Symmes, in the same year, was estimated to contain one million acres, but, in fact, contained much less. The grants of these tracts reserved certain sections in each township, and in 1787 Congress appropriated one of these reserved sections in each township "for the purposes of religion." These sections in the Symmes purchase were leased (in perpetuity, I think), and to this day a revenue, small in amount, is distributed to the churches in proportion to their membership. A better system of selling directly to the settler in small tracts was afterward adopted.

The rectangular system of land surveys was adopted in 1785, having been suggested by a Committee of Congress, of which Thomas Jefferson was chairman. The lands before sale are surveyed by Government surveyors on this general plan: Meridian lines are run from established base lines, and townships, each six miles square, are run out and numbered, counting north and south, from the base line, and the ranges of townships are numbered east and west of the prin-

Surveys.

cipal meridian. The townships are each divided into thirty-six sections of six hundred and forty acres each, numbered from one to thirty-six inclusive. These sections are again divided into half and quarter sections. Careful maps of these surveys are made and filed in the Land Office, the corners being marked on the ground by suitable monuments. The grants to the railroads were generally of alternate sections, within a prescribed distance of the line of the road, and the price of the retained sections was doubled—made $2.50 per acre.

Homestead Law.

In 1862 the policy of giving to actual settlers thereon a quarter section (one hundred and sixty acres) of the public land, where the lands were rated at $1.25 per acre, or eighty acres, where the lands were rated at $2.50 per acre, was adopted by Congress. The settler is required to make affidavit that the land is entered for his own use as a homestead, and the patent does not issue to him until he has resided upon and cultivated the land for five years. In the case of soldiers and sailors the time served in the army or navy, and in the case of those discharged for wounds or disability the whole term of enlistment, may be deducted from the five years' residence required, but at least one year's residence is required in such cases. The Homestead law was a wise and

beneficent statute, and if it had come twenty years before would probably have settled the question of the extension of slavery without any further help from our statesmen.

As the public domain was acquired and settlers took possession of the lands, it became necessary to provide some form of government. The Ordinance of 1787, enacted by the Congress of the Confederation "for the government of the territory of the United States northwest of the river Ohio," was a noble as well as a notable act of legislation. The whole of that vast territory was made one "district." A governor, a secretary, and three judges were provided. The governor and judges were given power to adopt and publish in the district such laws of the original States as they might think best suited to the district, which were to be in force until disapproved by Congress. When there were 5,000 male inhabitants of full age the election of a territorial legislature was provided for, to consist of the governor and legislative council and a house of representatives. A delegate to Congress was also to be elected. There followed a declaration of certain great principles which it was declared should be "considered as articles of compact, between the original States and the people and States in the said territory, and for-

Ordinance of 1787.

The unalterable compact.

ever remain unalterable, unless by common consent." Religious freedom, the *habeas corpus*, the right of representation, the trial by jury, the free navigation of the great rivers, were forever guaranteed to the people who were to find homes in this vast and fertile region. And by the sixth article slavery was forever excluded from the States, "not less than three nor more than five," to be formed out of the territory.

Admission of new States.

The Constitution contains this provision as to new States: "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress." As convenient and suitable portions of the Northwest Territory became sufficiently populous they were separated and formed into States. In dealing with other great sections of the public domain, the general course has been to organize territorial governments, with a governor, secretary, and certain judges appointed by the President. The legislature, a territorial judiciary, and the other administrative officers are selected by the people. The power of Congress to legislate for the territories is plenary, and all territorial

laws are subject to be annulled by Congress. The process of admitting a State has not been uniform, but in many cases there has been an act of Congress, called an enabling act, authorizing the calling of a constitutional convention, prescribing the steps to be taken by the people and defining the boundaries of the new State. In some cases the acts required the constitution adopted to be submitted to Congress for its approval; and in others compliance with the prescribed terms was to be evidenced by a proclamation of the President. In other cases there has been no enabling act, the initiative being taken by the territorial legislature. In these cases the constitution adopted has been presented to Congress for its approval. Out of this habit of dealing with the public domain has come the common thought that all territory that we acquire must, when sufficiently populous, be erected into States. But why may we not take account of the quality of the people as well as of their numbers, if future acquisitions should make it proper to do so? A territorial form of government is not so inadequate that it might not serve for an indefinite time.

The process.

The discovery of gold in California, and later in others of the States, upon the public lands, called for a modification of the land laws, which had been framed for the sale of agricultural lands. The

earliest mining laws were enacted, not by Congress, but by the miners themselves in the mining districts. It is a curious fact that from 1849 to 1866, the period of the greatest development in the mining of the precious metals, there was no law of the United States regulating the subject. The prospectors roamed over the public lands, located placer or quartz mines, and took out a fabulous store of the precious metals, without any title whatever to the lands from which they dug them. They were in a strict sense trespassers. A policy to reserve mineral lands from sale under the general land laws had prevailed for many years, and had been expressed in suitable laws, but no provision had been made for the sale of such lands. In the land grants to the Pacific railroad companies it was provided that mineral lands should not pass under the grants. The river-beds, gulches, and mountain-sides were prospected by men who carried picks and basins in their hands, and a brace of pistols in their belts. They were aflame with the lust of gold, and among them were many desperate men; but they had the Anglo-Saxon's instinct for organizing civil institutions, and his love of fair play. There were not only no mining laws, but in many places none of any sort. They met the emergency by a public meeting, which resolved

Mines and miners' law.

Camp legislatures.

itself into a legislative body with full powers, and made a code that did not cover a wide field, but covered their case. The limits of a claim and the distribution of the water-supply were prescribed and established, and every man became a warrantor of every other man's title. These camp legislators had this advantage of Congress, and of all other legislative bodies that I know of—they had a good practical knowledge of the subjects they dealt with. These district mining regulations were so fair that when Congress came to make laws upon the subject they were not only recognized as to past transactions, but purchases under the law of 1872 were to be "according to the local customs or rules of miners in the several mining districts so far as the same are applicable, and not inconsistent with the laws of the United States." The claims on a mining lode or vein were limited by the law of 1872 to fifteen hundred feet in length along the vein or lode, and to three hundred feet on each side of the middle of the vein at the surface.

Census of population, wealth, and industry.

The "Census of the population, wealth, and industry of the United States," as the law calls it, is taken every ten years. Section 2 of Article 1 of the Constitution provides that the first enumeration of the people of the States shall be made within three years after the first meeting of Congress, and another within every

subsequent term of ten years. Population is made the basis of representation in the House of Representatives, and of direct taxation, and it is therefore necessary that, at stated intervals and as of the same day throughout all the States, a count of the people should be made and officially reported to Congress. This count determines the relative number of members of Congress that each State shall have for the next ten years. But the census is now much more than a count of the people. It embraces a statistical inquiry into the wealth, health, occupations, education, physical and mental infirmities, the public indebtedness, the product and progress of agriculture, manufactures, and commerce; the number, sex, and ages of employees, wages paid, etc. The head of the Census Bureau is called the Superintendent of the Census.

The Indians—Methods of work.

One of the most important and delicate duties of the Secretary of the Interior is the supervision of the Indian tribes. There is a Commissioner of Indian Affairs who, under the Secretary, has charge of all matters relating to the Indians and a Board of Indian Commissioners—persons eminent for philanthropy and intelligence—whose duty it is to supervise the expenditure of all moneys appropriated for the Indians and to inspect all goods purchased for their use. The members of the board serve without com-

pensation. There are inspectors who visit the agencies and examine into their condition and accounts; an agent for each tribe (generally), who lives on the reservation, issues supplies, enforces good order, and by the help of teachers, mechanics, and farmers promotes the civilization of the Indians. The policy of dealing with the Indian tribes as independent nations, having, as tribes, a title to large and undefined tracts of land, originated in Colonial times, and was continued by the United States until 1871, when a law was enacted declaring that "no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty." Existing treaties were, however, preserved. We made treaties with the tribes just as with Spain or any foreign power. The President acted under the treaty-making power of the Constitution, and the conventions generally expressly stipulated that they were to become binding when ratified by the Senate. They related chiefly to peace and war, and to the cession of lands. And yet the tribes were in no real sense independent nations. The Supreme Court, speaking through Chief-Justice Marshall, called them "domestic, dependent nations," and further de-

No more treaties.

Wards.

fined their relations as follows: "They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian."

The Indian title to the tribal lands has been held to be a mere right of occupancy; he is not a citizen within the provision of the Fourteenth Amendment, and cannot be naturalized under the general naturalization laws of the United States. The community or tribal ownership and occupation of the reservations prevented the improvement of the lands and promoted a wandering and lazy life. The efforts of the Government to promote the civilization of the Indians have been constant and costly, but not always wise. We have bought our peace by promises not always kept; have recognized and even dignified the chiefs, and so perpetuated the tribal relation and land ownership, when the deposition of the chiefs, the breaking up of the tribes, and the allotment of lands in severalty offered the only permanent solution of the vexed Indian question. This policy has now been adopted: the Indian has citizenship and "a white man's chance" offered to him, and must take it or perish.

Lands in severalty.

The schools at Hampton and Carlisle have done a great work for Indian children, but if the education there received and the decent habits of life there acquired are to be saved and made effective, the pupils must not be returned to the tepee and to a nomadic life, but to households and to farms, or village trades. How little the old Indian appreciates education is disclosed by an incident that fell under my observation in 1885. With a committee of the Senate I visited the Crow Indians in Montana, and during our talk the Indians were urged to send their children to the Government schools. An old chief arose and said that he had been sending his children to the agency school, but the Great Father had never given him anything for doing it, and he would not send them any longer.

Indian schools.

The "five civilized tribes," as we have come to call them — the Creeks, Chickasaws, Cherokees, Choctaws, and Seminoles—now occupy a territory of about 31,000 square miles, generally well adapted to agriculture and stock-raising, called the Indian Territory. Our treaties give them full governing powers over their own people, and prohibit the intrusion of white settlers. When these tribes were removed from their old homes east of the Mississippi it seems to have been thought that a location had been found

"Five civilized tribes."

for them that would never be pressed upon by the white settlements. The treaty of 1828 with the Cherokees opens with this recital: "Whereas it being the anxious desire of the Government of the United States to secure to the Cherokee nation of Indians . . . a home that shall never in all future time be embarrassed by having extended around it, or placed over it, the jurisdiction of a Territory or State, nor be pressed upon by the extension in any way of any of the limits of any existing Territory or State," etc. But, within the lifetime of men who witnessed the treaty, the ceded lands have been encircled by organized States and Territories; railroads have been run in every direction through the reservations, and intruding white men—many of them vicious and desperate—have spoiled the experiment of an independent Indian Government. That a necessity now confronts us to change the whole basis of civil government in the Indian Territory is clear. These Indians must become citizens of the United States.

Pensions.

Perhaps no bureau in any of the departments has attracted so much interest or so much criticism as the Pension Bureau. It deals with the surviving veterans of our wars and with their widows and orphan children. There may be fair differences of opinion as to the extent and conditions of pension relief, but there is

no room for doubt as to pensions. Eleven dollars a month for war service implies, at least, relief in case of wounds or sickness for the soldier, and that, in case of death, the public will care for his widow and minor children. When the law of pillage prevailed it was otherwise; and when our rich men take to fighting our wars we can abolish the pension system. But thus far it is as true of the armies that won our independence, delivered us from the Indians and the British, and saved the nation in the great Civil War, as of the Kingdom of Heaven: "not many rich."

Two views.

There are two views of the pension question—one from the "Little Round Top" at Gettysburg, looking out over a field sown thickly with the dead, and around upon bloody, blackened, and maimed men cheering the shot-torn banner of their country; the other from an office-desk on a busy street, or from an endowed chair in a university, looking only upon a statistical table.

With War Department until 1849.

In 1789 Congress assumed the pensions which had been granted by the States to the wounded and disabled soldiers of the Revolutionary War. The administration of the pension business was in the War Department until 1849, when it was transferred to the new Department of the Interior.

The organization of the Pension Bureau is: A commissioner, two deputy commissioners, a chief clerk, an assistant chief clerk, a medical referee, and an assistant medical referee, a law clerk, a board of review, and thirteen divisions, each with a chief.

Patents—Patent Office.

One of the Constitutional powers of Congress is to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. When we say an article is "patented" we mean that "letters patent" have been issued to someone as the inventor. We call them "letters" because they are messages, addressed to the public, and "patent" because they are open — to be known by all.

The general organization of the Patent Office is a commissioner of patents, an assistant commissioner, a chief clerk, three examiners-in-chief, an examiner of interferences, and a large number of examiners and assistant examiners, clerks, and draughtsmen.

Patents are granted to persons who have invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, not be-

fore patented, or described in any publication in this or any other country, and not in public use or on sale for more than two years; and secure to the patentee the exclusive use of the patented thing for a term of seventeen years.

The Act of March 2, 1867, provides for what is called the "Office of Education," and places it under the direction of the Secretary of the Interior. The head of this office is called the "Commissioner of Education," and his work is "to collect and publish statistics and facts showing the condition and progress of education in the several States and Territories, and to diffuse such information respecting the organization and management of schools and school systems and methods of teaching," as will promote the cause of education. The United States, chiefly by land grants, has greatly aided both common school and university education in the States, but the control of public education belongs to the several States. The Commissioner of Education has no authority to direct, but only to inform and suggest. An exception exists in the case of schools in Alaska, which are under his direction. His office is a sort of educational clearing-house.

Office of Education.

The tremendous grants of public lands and of the public credit to certain railroads, and the conditions annexed thereto relating to the repayment

of the loans, and to the transportation of the mails and of military supplies, seemed to call for an officer especially charged with the duty of looking after and protecting the public interests growing out of these great and complicated transactions. And so, in 1870, the office of Auditor of Railroad Accounts was created in the Interior Department. The title of the head of the office was changed, in 1881, to that of "Commissioner of Railroads." His duties are to require annual reports from the aided railroads, to see that the laws relating to such roads are enforced, and to make an annual report of their condition.

Commissioner of Railroads.

The Geological Survey is another subject, the direction of which is committed to the Secretary of the Interior. The head of this office is called the "Director of the Geological Survey." The work of the survey has covered a very wide range. The main object was the geological examination of the public lands, with a special view to their mineral resources. This has been in good part accomplished, and very much more that is of great historic and scientific value.

Geological Survey.

THE DEPARTMENT OF AGRICULTURE

The Department of Agriculture was created in 1862, but it was not made an executive department and the head of it a member of the Cabinet until February, 1889. Before the last-named date the so-called department was in fact only an independent bureau, and the head of it was called the "Commissioner of Agriculture." His duties were to acquire and to diffuse among the people useful information on subjects connected with agriculture, and to procure, propagate, and distribute seeds and plants.

Created in 1862. Made an executive department in 1889.

Since February 9, 1889, the scope of the department has been much enlarged. One of the most important of the new duties imposed upon the Secretary is that of inspecting and certifying meats intended for export, when the laws of the country to which the meats are destined require an inspection, or when the exporter asks for an inspection. An inspection of live animals intended for export was also provided. The inspection of meats is usually made at the packing-house—parts of each carcass being subjected to the microscope—and the cases, when ready for shipment, are suitably stamped by the

Inspection of meats and animals.

agents of the department. The department has also authority to inspect and quarantine live animals imported, and to slaughter such as are found to be diseased; to inspect and disinfect, when necessary, the vessels engaged in transporting live animals; to make rules that will secure the humane treatment of such animals, and to prevent the transportation of diseased animals from one State to another. All this elaborate and costly scheme for the inspection of meats and animals for export was made necessary by governmental discriminations against our meats in the great European markets. Ostensibly upon the ground that diseased meats came in from the United States, but in truth largely to protect their own meat producers against competition, some of the European governments had either excluded our meats or laid upon their importation severe restrictions. The true motive would be uncovered by a rigid inspection before shipment; and the President was empowered, if such unjust restrictions were continued, to retaliate by the exclusion from this country of designated articles coming from the countries maintaining such restrictions.

There is an Assistant Secretary of Agriculture, and the department is divided into the following divisions: Division of Accounts and Disbursements, of Statistics, of Botany, of Entomology, of

Pomology, of Vegetable Pathology, of Chemistry, of Forestry, of Publications, of Experiment Stations, of Agrostology, of Soils, of Fiber Investigation, and of Road Inquiry. Organization of department. At the head of each there is a chief of division. There are also experimental gardens and grounds, under a superintendent, a Bureau of Animal Industry, with a chief, and a museum with a curator in charge.

The department has issued some very valuable reports and monographs upon matters relating to soils, the cultivation of crops, the insect pests of the field and the orchard, Publications—Weather Bureau. the diseases of domestic animals, and upon many other subjects connected with agriculture in its broad sense. The work done has more than justified the law making it an executive department. It has already been said that the Weather Bureau was transferred to the Department of Agriculture in 1891. The value of this service to the people, and especially to the farmer and to the mariner, cannot be overestimated. It saves us from very large losses annually. The methods used in collecting and tabulating the meteorological data, and in distributing the information derived, and the publication of forecasts by flags and bulletins, are familiar to almost everyone.

CHAPTER XIX

INDEPENDENT BOARDS AND COMMISSIONS

SMITHSONIAN INSTITUTION—ORIGIN OF—REGENTS—JOSEPH HENRY—DEPARTMENT OF LABOR—INTERSTATE COMMERCE COMMISSION—CIVIL SERVICE COMMISSION—FISH COMMISSION—PROFESSOR BAIRD—THE CARP A BLUNDER.

THERE are some boards, commissions, and establishments, outside of the eight executive departments, that should be briefly noticed.

Smithsonian Institution, origin of.

The Smithsonian Institution is not under the care or direction of any of the executive departments. It had its origin in a bequest of James Smithson, an English scientist, who died in Genoa, in 1829. He gave to the United States something more than half a million of dollars "to found at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men." The money was paid into the Treasury in 1838, but it was not until 1846 that a law was passed organizing the Institution. The United States assumed to pay six per cent. interest on the fund semi-annually for the uses of the Institution, holding the principal intact and receiving any

further sums deposited for the same uses up to a limit named. By the amendatory act of 1894 the President, the Vice-President, the Chief-Justice, and the heads of the executive departments are made an "establishment" by the name of the "Smithsonian Institution," with perpetual succession. The government is by a Board of Regents composed of the Vice-President, the Chief-Justice, three members of the Senate (to be selected by the President thereof), three members of the House of Representatives (to be selected by the Speaker), and six other persons, two of them to be residents of Washington, to be selected by a joint resolution of Congress. A chancellor, chosen from the board, an executive committee, a secretary, an assistant secretary, and a curator, complete the general organization. The selection of Professor Joseph Henry as the first Secretary was an inspiration. He held the office until his death, in 1878. "The increase and diffusion of knowledge" was the life purpose of Henry. Professor Newcomb said of him: "He never engaged in an investigation or an enterprise which was to put a dollar into his own pocket, but aimed only at the general good of the world." His great attainments as a scientist and his great wisdom as an administrator enabled him, in thirty years of devoted ser-

Board of Regents.

Joseph Henry.

vice, to place the Institution among the world's great fountains of knowledge. The Institution publishes contributions upon a great variety of subjects, maintains an annual course of lectures, a great museum, conducts original investigations and explorations, and exchanges books and specimens with other institutions.

The Bureau of Labor, established in 1884, was, in 1888, made the "Department of Labor," under the charge of a chief officer called the "Commissioner of Labor." The general purposes of the department, as set forth in the law, are to "acquire and diffuse among the people of the United States useful information on subjects connected with labor in the most general and comprehensive sense of that word, and especially upon its relation to capital, the hours of labor, the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity." The Commissioner is specifically required to ascertain the cost of producing in foreign countries articles dutiable in the United States: the wages paid, hours of labor, profits on capital employed, the cost of living, etc.; also the effect of the customs duties, and what articles are controlled by trusts or combinations of capital or labor; the cause and effect of all labor troubles that may occur; and what convict-made goods are im-

The Department of Labor, work of.

ported into the United States. The vastness and intricacy of the work laid out for the Commissioner will be revealed to the reader who attempts to supply the details involved in the sweeping phrases of the law. Some valuable reports have been printed by the Commissioner; but the labor question has not been solved, and is not to be solved—though the solution may be aided—by statistical tables.

Labor question.

The Interstate Commerce Commission was established by the "act to regulate commerce" approved February 4, 1887. The law is the exercise of the power given to Congress by the Constitution to regulate commerce among the States. It is expressly declared that its provisions do not embrace transportation wholly within any one State. It provides that transportation rates shall be reasonable; prohibits discrimination among shippers, by special rates, rebates, or any other device, and any preferences of localities; requires equal facilities to be given to all connecting lines; declares that the aggregate charge for a short haul shall not be more than for a long haul, except as allowed by the Commission; and makes illegal all pooling agreements for the division of freights or earnings between competing railroads. Fare and freight schedules are required to be

Interstate Commerce Commission.

Provisions of law.

printed and posted in public places, and no advance of fares or rates can be charged until after ten days' notice of the change; no reduced rates or fares can be taken until after three days' notice; and no fares or rates greater or less than the schedule rates and fares can be received. The Commission consists of five members, not more than three of whom can be of the same political party. It is the duty of the Commission to hear complaints of violations of the law, and to institute proceedings in the courts for such violations. It has power to call for annual reports from all carriers subject to the act, and for answers to any specific inquiries the Commission may submit. There have been many cases in the courts arising out of the law, affecting the powers of the Commission, but it is only intended here to give an outline of the scope of the law and of the work of the Commission.

Work of Commission.

The Civil Service Commission was created by the act of January 16, 1883. It consists of three commissioners, not more than two of whom can be of the same political party. It is provided with a chief examiner, a secretary, and a number of clerks. The purpose of the law was to withdraw from the influence of politics and favoritism the appointments to clerical positions in the public service. There have been

The Civil Service Commission.

from time to time extensions of the classified service by orders of the President, until now about 84,000 appointments are included out of about 178,000 of all grades. Examinations are held at Washington and at other points throughout the country for positions in the different branches of the service. Those who pass the examinations are graded and listed as eligible for appointment, and when vacancies occur names are certified from these lists to fill them. Assessments for party purposes are forbidden, and also the solicitation in any public building of money for such uses. No Presidential appointments—such as must be confirmed by the Senate—are included in the classified service. As the extensions of the classified service are by the orders of the President it follows that such orders may be revoked or modified at his pleasure. Every order of extension not only fences out those who seek places upon party considerations and influence, but fences in the incumbents—every one of whom perhaps has been appointed upon such considerations. Just now the Civil Service law is being subjected to an attack incited by this consideration largely. But, spite of mistakes in its administration, the system will stand. The examination paper is not an infallible test of fitness for these clerical positions; but it is

Examinations.

Fences in, as well as out.

a better test than mere party service, and perhaps the best that can be devised.

The Fish Commission.

The Fish Commission was first established in 1871, by an act which provided for the appointment of a Commissioner of Fish and Fisheries from among the civil officers or employees of the Government. He was required to be a person of proved scientific and practical acquaintance with the fishes of the coast, and to serve without additional salary. The first commissioner was Professor Spencer F. Baird, who was at the time Assistant Secretary of the Smithsonian Institution, and who became Secretary on the death of Professor Henry. Professor Baird's "scientific and practical" knowledge of fishes was such as to win him medals and decorations. A talk with him upon the subject was a delightful experience. In 1888 the requirement that the commissioner should be an officer or employee of the Government was repealed, and provision made for the appointment of a commissioner at an annual salary of $5,000. The detail of officers and men of the Revenue Marine for Fish Commission work was authorized, and from time to time appropriations have been made for the construction of vessels for the special service of the Commission. The general work of the Commission is to study the habits of the food

Professor Baird.

fishes, and to devise measures for maintaining the supply. Hatcheries have been established at many places, and every year millions of the fry of shad, salmon, trout, and other food fishes are placed in the rivers of the country. The only serious mistake of the Commission was the introduction of the carp, under the mistaken impression that it could be made an American food fish.

The carp a blunder.

CHAPTER XX

THE JUDICIARY

A SUPREME INDEPENDENT JUDICIARY—JUDICIAL POWERS UNDER CONFEDERATION—CONSTITUTIONALITY OF LAWS OF CONGRESS —OF THE STATES—COURT TRIES ACTUAL CASES—WASHINGTON'S QUESTIONS—SUIT AGAINST A STATE—ELEVENTH AMENDMENT—WASHINGTON'S ESTIMATION OF SUPREME COURT—NO END TO CONSTITUTIONAL QUESTIONS—POLITICAL QUESTIONS.

A supreme independent judiciary.

A SUPREME independent judiciary is an indispensable element of every government that engages to protect the property rights and liberties of its citizens; for protection involves ascertainment—a judgment—and a mandate. An orderly and peaceful community is impossible without a court to adjudge the inevitable disputes between the individuals who compose it, and to ascertain and punish infractions of the public peace. These duties cannot be intrusted to a foreign tribunal. The government that enacts laws must have its own courts to interpret and apply them.

The Constitution of the United States is the supreme law, and every law of Congress, every State Constitution, and every State law must be brought to the test of this supreme law, and is valid or in-

valid as it stands, or fails to stand, that test. The interpretation and enforcement of the National Constitution and laws could not, for several obvious reasons, be left to the State courts. Uniformity of interpretation would be impossible if the Supreme Appellate Courts of the States could, each for itself, and finally for the people of the particular State, construe the National Constitution and laws. And especially questions affecting the conflicting powers of a State and of the National Government could not be left to the decision of the State court. If the powers given to the National Government were to be maintained, and uniformly and beneficially exercised, it was essential that the final judicial determination of the scope and limits of those powers should be confided to national courts. It would not have done in 1861 to submit the question of the right of a State to secede from the Union to the Supreme Court of South Carolina, or perhaps to any court.

Constitution the supreme law.

The Articles of Confederation gave to Congress the power to appoint courts for the trial of piracies and felonies committed on the high seas, and of appeals in prize cases; and Congress was made the court of final appeal in all disputes between States concerning boundaries, jurisdiction, and other matters, and of

Judicial powers under Confederation.

conflicting claims to lands held or claimed under grants from different States. This was a very limited and inadequate jurisdiction, and was very feebly exercised. The State courts showed little more deference to the Judicial Department of the Confederation than the State Legislatures did to Congress. A Pennsylvania court refused to recognize the appellate jurisdiction in a prize case, and Congress, recognizing the crude and inefficient character of the judicial powers of the Confederation, sometimes directed Federal cases to be tried in the State Courts. The Confederacy had no court authorized to construe and enforce the laws of Congress, or to punish offences other than felonies on the seas. Hamilton spoke of this as the crowning defect of the Articles of Confederation.

State laws tested by Constitution.

The framers of the Constitution, instructed by the defects of the Articles of Confederation, saw that questions as to the validity of State laws must arise. Certain supreme powers were to be given to the United States, and certain other powers prohibited to the States. There must be a veto power somewhere upon any State laws that invaded the powers of the United States or used the powers prohibited to the States. Mr. Madison proposed that Congress should have the power to veto a State law,

but the Convention was led to a wiser solution of the difficulty.

To the Supreme Court of the United States, an independent judicial tribunal of the highest dignity, removed as far as men can be removed from the sway of human passions and prejudices, and placed under the sanction of the highest obligation that can be imposed upon men to exercise justice without fear or favor, the safe-keeping of the ark of our civil covenant was committed. The power to bring laws to the test of the Constitution is not limited to the laws of the States, but includes the laws of Congress. This power must be exercised by some body or tribunal, if the "supreme law" is to be supreme. Gouverneur Morris said: "Such power in judges is dangerous; but unless it exists somewhere the time employed in framing a bill of rights and form of Government was merely thrown away." The Supreme Court.

The first decision of the Supreme Court holding a law of Congress to be unconstitutional was given in 1803 (Marbury *vs.* Madison, 1 Cranch, 137), the opinion being delivered by Chief-Justice Marshall. In the course of the opinion he said: "So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably A law of Congress unconstitutional.

to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the court must determine which of these conflicting rules governs the case." Nothing can be added to this luminous statement. We have a higher law and a lower law. When they both apply to a case before the court, the higher law must prevail—is the law of the case; and the courts must follow the law. The manner in which this high power is exercised has greatly tended to promote its effectiveness and to avoid the irritations that would otherwise have been excited. The laws of Congress and of the States are not laid before the Supreme Court to be marked "Constitutional" or "Unconstitutional," as the case may be, and returned to the Legislative bodies. The court takes no notice of statutes until they are brought to its attention in a "case"—a real controversy between persons. It will not answer abstract questions nor hear "moot cases." In 1793 Washington, being greatly perplexed by some questions of international law growing out of the obstreperous conduct of the representative of France, propounded to the Supreme Court twenty-nine questions: as to the right of France to fit out vessels of war in our ports, to set up prize courts in our territory; whether free bottoms made free cargoes, etc. The Court respectfully declined to

Court tries cases. Washington's questions.

answer the questions—holding that it could only give opinions in cases properly brought before it. In some of the States provision is made for submitting abstract questions to their supreme courts. In the civil crisis that occurred in Maine under Governor Garcelon this method of getting a judicial expression was used with good effect, but, on the whole, it is better that all questions requiring a judicial determination should be brought before the courts in suits between individuals.

The Supreme Appellate Courts of the States exercise the power to declare acts of the State Legislatures to be invalid if they conflict with the Constitutions of the States. Under the English Constitution—where an Act of Parliament is the highest written law—the courts are not called upon to decide between an Act of Parliament and a Constitution. The English courts, however, must interpret Acts of Parliament when they affect cases before the courts. But if a law is interpreted in a sense other than that intended by Parliament, it is in the power of that body to pass another act that will carry out the original intention. That may also be done here if the question is only one of interpretation. But if a law, as to its general purpose, is held by the Supreme Court to be invalid because it conflicts with the Constitution,

No question of constitutionality in England.

Congress is without any further constitutional power in the matter. The decision is strictly final only between the parties to the case in which it was rendered. As to other persons it is only final in the sense that if they assert any right under the same statute they may expect their cases to be decided in the same way. But the Constitution has not left the people without an orderly way of making the Constitution what they desire it to be, if the Supreme Court should construe it to be something else. That method is by amendments proposed to the States, either by a vote of two-thirds of both Houses of Congress, or by a convention requested by the Legislatures of two-thirds of the States, and adopted by the Legislatures of three-fourths of the States, or by conventions in such States. There is an instance of such a use of the power of amendment. The Second Section of Article Three of the Constitution declares that "the judicial power shall extend . . . to controversies . . . between a State and citizens of another State."

Suit against a State.

In the "Federalist" Hamilton argued that the jurisdiction thus given did not extend to suits brought by individuals as plaintiffs against States. But in 1793 the Supreme Court, in an opinion by Chief-Justice Jay, held that the jurisdiction did extend to such cases,

and entertained a suit by one Chisholm, a citizen of South Carolina, against the State of Georgia, for the recovery of a debt. Great popular excitement followed the decision, for it seemed to be in derogation of the dignity of a State that it should be drawn into court at the suit of a citizen of another State. Relief was sought and obtained—not by packing the court, but by the adoption, the following year, of the Eleventh Amendment, which declares that the judicial power "shall not be construed" to extend to suits by citizens of another State or of a foreign country, against a State. In the exercise of this extreme but necessary power to declare a law of Congress or of a State to be invalid, the Supreme Court has acted with great conservatism, but also with great courage. The services of that court, in defining and defending the national powers, can hardly be over-estimated, and are popularly very much under-estimated.

Eleventh Amendment.

Washington has left on record many expressions of his estimate of the value of the national judiciary as an element in our system of Government. They have a present application.

Washington's estimation of the Supreme Court.

In transmitting his commission as Chief-Justice to John Jay, of New York, he took occasion to say: "It gives me singular pleasure to address

you as the head of that great department which must be considered the keystone of our political fabric."

And to James Wilson he wrote: "Considering the judicial system as the chief pillar upon which our Government must rest, I have thought it my duty to nominate for the high offices in that department such men as I conceived would give dignity and lustre to our national character."

These expressions of Washington are impressive and ought to be pondered by those who are inclined to disparage the judiciary, and by those who would destroy the independence of the Supreme Court by threats of reconstructing it when their views of constitutional construction are not followed.

Mr. Webster's statement that "the Constitution without it would be no Constitution—the Government no Government," is not an overstatement.

No end to constitutional questions.

Among the men who framed the National Constitution there were many of eminent legal ability, and some who possessed in a high degree the faculty of accurate expression; yet from the hour that Government under the Constitution was instituted until this hour a great procession of questions as to the meaning of this section or this phrase of that instrument has been moving into the Supreme Court-room for

solution. The door has not yet closed upon the last of them and probably never will. These questions relate not only to the text—to the express powers granted to the national Government—but every express power may carry one or many incidental powers—that is, powers necessary to carry into effect the express or specific power. The power or direction to do a particular thing implies the power or direction to do all other things that must be done to execute the power or carry out the direction. To the lay mind it may seem to be puzzling and not a little discouraging that a century has not sufficed to interpret the Constitution; but the explanation is largely in the fact that constitutional provisions are general and not particular, and the court is required constantly to apply them to particulars and to new conditions. What does the interstate commerce clause mean as applied to railroads and the telegraph—things the writer of that clause never dreamed of? How are the limitations of the Constitution to be applied to a state of civil war? How is the guarantee of a republican form of government to the States to be made good in the case of an attempted secession? Is an Executive proclamation effective to emancipate the slaves in time of civil war? It would not have been safe to try to be specific, even if all these things could

Provisions general. New conditions.

have been anticipated by the members of the Convention. And it may be that if every future application of the general propositions adopted had been foreseen some of the most important of them would have been negatived.

Division of powers.

The makers of our Constitution, instructed by the experience of the Colonies, by the State Constitutions already adopted, and by earlier lessons from British history, found an easy agreement upon the general principle that the judicial power of the United States should be vested in a separate and independent department. The division of powers will be made plainer by bringing together the opening sentences of the first three Articles of the Constitution:

Article 1. All Legislative powers herein granted shall be vested in a Congress of the United States.

Article 2. The Executive power shall be vested in a President of the United States of America.

Article 3. The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Upon this threefold frame the other provisions of the Constitution are hung. The limitations upon the powers of the United States Courts will be more clearly understood if what has been before said in another connection is recalled here—

namely, that the powers of Government in this country are divided between the nation and the States upon the principle that certain powers are set off to the United States, and all other powers, save a few that are prohibited, are retained by the States. The Constitution enumerates the powers which the people have given to the nation. "The judicial power of the United States" is, therefore, such power of a judicial nature as the Constitution gives to the United States — no more. The residue of the judicial power the people have reserved, and have given the whole, or such part of this reserved power as pleased them, to the State Courts.

The judicial power.

But as to the subjects or cases given to be judged by the United States Courts the power is complete and supreme. The decision of the Supreme Court of the United States in any case of which it has jurisdiction is final; and the question whether it has jurisdiction of the case it must, of course, settle for itself. No other court can intercept its mandates. The final interpretation of the Constitution of the United States as affecting the question of the court's jurisdiction to receive a case, as well as to the principles upon which the case is to be judged, is, and must in the nature of things be, with the Supreme Court of the United States. A power in a State

Questions of jurisdiction included.

Court to determine finally a question of the construction of the Constitution of the United States, as affecting the jurisdiction of the United States Courts, would subordinate and practically destroy the Federal judiciary.

The grant of the power to hear and determine suits involving specific subjects, or between particular persons, carries the power to determine whether those subjects are involved in the case presented, and whether the parties are of the classes described. It is expressly written that "the judges in every State" shall be bound by the Constitution and the laws made in pursuance of it, "anything in the Constitution or laws of any State to the contrary notwithstanding." Briefly and generally, then, this is the "judicial power of the United States"—to hear and determine finally such cases, and only such, as the Constitution commits to the courts of the United States, and *ex necessitate*, to decide whether each case as it is presented is within the grant of judicial power.

Political questions are left by the Constitution to the political departments—namely, the Congress and the President; and the Supreme Court will not consider them. Chief-Justice Marshall said: "Questions in their nature political, or which are by the Constitution and laws submitted to the Executive, can never be

Will not try political questions.

made in this court." Political questions are such as the recognition of the sovereignty of another nation and of its territorial limits, the recognition of a particular organization as the true Government of a State, or the determination by the President when called upon to aid in suppressing a domestic insurrection in a State, as to which is the lawful Government, etc.

CHAPTER XXI

THE JUDICIARY (CONTINUED)

CREATION OF SUPREME COURT—NUMBER OF JUSTICES—JAY AND MARSHALL—TENURE—GOWNS AND WIGS—SCOPE OF FEDERAL JURISDICTION—RULE IN CONSTRUCTION OF STATE LAWS—ORIGINAL JURISDICTION OF SUPREME COURT—CIRCUIT AND DISTRICT COURTS — CIRCUIT COURTS OF APPEALS — COURT OF CLAIMS—HIGH CHARACTER OF FEDERAL JUDGES.

BEFORE proceeding to particularize as to the jurisdiction of the courts, let us see how they are constituted. The Constitution establishes one court only—namely, the Supreme Court—and that not fully, for it does not fix the number of justices that shall compose the court. That is left to Congress—unwisely, for it weakens the stability and detracts from the independence of the Court. If political interests are involved in a decision, and the decision is adverse to the party in power, the suggestion that a reversal may be secured by increasing the number of the justices is very tempting to partisans, but its frequent use will be destructive, fatally so, to our constitutional union.

Creation of Supreme Court.

Number of Justices.

It may be said that the Convention could not anticipate the increase of the business to come be-

fore the Court and provide a bench for all time. But it would have been always practicable to provide for an increased amount of litigation by limiting the appeals and creating inferior appellate courts to decide cases of lesser importance, as has now been done, or by increasing the number of justices by an amendment to the Constitution. If it be said that the latter method is slow and difficult it may be answered that all changes in the constitution of the Supreme Court ought to be slow and difficult. It is to be borne in mind, also, that an increase in the number of justices only a little expedites business. No case ought to come to the Court that is not of sufficient importance to demand the attention of all the justices. And if all the justices sit in all cases and participate in the decision of them, as they have always done, and should do, an added justice only becomes an aid in despatching business when the opinion is to be written; and much of this gain in time may have been lost in more protracted discussion in the consultation-room.

Judiciary Act of 1789. Six Justices.

The Judiciary Act of 1789, which gave the Court its organization, provided for a Chief-Justice and five Associate Justices. John Jay was the first Chief-Justice, and his associates, as first named and confirmed, were John Rutledge, James Wilson, William Cushing, Robert

H. Harrison, and John Blair. Harrison was, about the same time, chosen Chancellor of Maryland. He accepted the latter office and returned his commission as Associate Justice. James Iredell was appointed in his place. The Court was first opened for the transaction of business February 2, 1790.

Jay and Marshall.

Of John Jay, Mr. Webster said: "When the spotless ermine of the judicial robe fell upon John Jay it touched nothing less spotless than itself."

The most distinguished of Jay's successors as Chief-Justice was John Marshall. Of him, Mr. Bryce says:

> Yet one man was so singularly fitted for the office of Chief-Justice, and rendered such incomparable services in it, that the Americans have been wont to regard him as a special gift of favoring Providence. This was John Marshall, who presided over the Supreme Court from 1801 till his death in 1835, at the age of seventy-seven, and whose fame overtops that of all other American judges more than Papinian overtops the jurists of Rome, or Lord Mansfield the jurists of England. No other man did half so much either to develop the Constitution by expounding it, or to secure for the judiciary its rightful place in the Government as the living voice of the Constitution. No one vindicated more strenuously the duty of the Court to establish the authority of the fundamental law of the land, no one abstained more scrupulously

from trespassing on the field of executive administration or political controversy. The admiration and respect which he and his colleagues won for the Court remain its bulwark: the traditions which were formed under him and them have continued in general to guide the action and elevate the sentiments of their successors.[1]

And again:

He grasped with extraordinary force and clearness the cardinal idea that the creation of a National Government implies the grant of all such subsidiary powers as are requisite to the effectuation of its main powers and purposes, but he developed and applied this idea with so much prudence and sobriety, never treading on purely political ground, never indulging the temptation to theorize, but content to follow out as a lawyer the consequences of legal principles, that the Constitution seemed not so much to rise under his hands to its full stature, as to be gradually unveiled by him till it stood revealed in the harmonious perfection of the form which its framers had designed.[2]

Now nine Justices.

The Court is now composed of nine Justices. The Chief-Justice presides, and receives a salary of $10,500 per annum. The Associate Justices receive $10,000. The justices are appointed by the President and confirmed by the Senate, as are all the judges of the inferior United States Courts. In the Convention the Virginia plan was that Congress

[1] Bryce: The American Commonwealth, vol. i., p. 261.

[2] Ibid., p. 375.

should appoint them. Mr. Madison suggested that the Senate should appoint, and Mr. Wilson was for their appointment by the President. The Convention finally agreed unanimously to the provision as it stands.

Tenure and retirement.

The justices of the Supreme Court and all the judges of the lower United States Courts hold their offices, as we commonly say, for life. The Constitution says: "Shall hold their offices during good behavior." They can be removed from office only by the process of impeachment. In England a judge of the Supreme Court of Judicature may be removed by the Crown upon the request of both houses of Parliament. There is no age limit of service, and Congress has no power to prescribe one. But in view of the fact that age does incapacitate, that its incapacity extends to all active labor, and that a judge might hold on to his office after he was incapacitated by age if no provision were made by law for his support, Congress passed a law providing that any justice or judge who has served ten years, and has reached the age of seventy, may voluntarily retire, and shall receive the full salary of the office during life.

There has been much discussion as to the proper tenure for the judicial office, and the tendency, as expressed in the later State Constitutions, has been

in favor of limited terms. The earlier State Constitutions generally gave the appointment of the judges to the Governor or to the Legislature, but along with the demand for limited terms for the judges, came another for their election by the people, and in a majority of the States they are now nominated in the party conventions and elected by popular vote, just as a governor or sheriff is chosen. Neither of these changes is a reform. Limited terms, if they are long, may be supported by many considerations; but short terms, combined with popular elections, have not secured as high a judicial standard as prevailed before. A judge who must go at short intervals before a political convention for a nomination, and before the people for an election, cannot have the same sense of independence and security that he would have if his term were long or during good behavior. The judicial office should be so organized that men of the best abilities and attainments will enter it as a career, and give their lives and their ambitions wholly to it.

Judicial terms in the States.

When the constitutional organization of the Court had been settled and the high duty of selecting the justices had been performed by Washington, the smaller, but not wholly unimportant, question of a court-dress loomed up, and much agitated and divided the

Gowns and wigs.

minds of our public men. Shall the justices wear gowns? And if yea, the gown of the scholar, of the Roman senator, or of the priest? Shall they wear the wig of the English judges? Jefferson and Hamilton, who had differed so widely in their views as to the frame of the Government, were again in opposition upon these questions relating to millinery and hair-dressing. Jefferson was against any needless official apparel, but if the gown was to carry, he said: "For Heaven's sake discard the monstrous wig which makes the English judges look like rats peeping through bunches of oakum." Hamilton was for the English wig with the English gown. Burr was for the English gown but against the "inverted wool-sack termed a wig." The English gown was taken and the wig left, and all who see the Court in session will agree that the flowing black silk gowns worn by the justices help to preserve in the court-room that decorum and sense of solemnity which should always characterize the place of judgment.

Cases of Federal jurisdiction.

It would not be profitable to go into great detail as to the jurisdiction of the United States Courts. My readers will only desire to know what general classes of cases are tried in the United States Courts, and to have a general view of the lines that separate between the United States Courts and the courts of the States.

Section 2 of Article 3 of the Constitution declares that the "judicial power," vested by the preceding section in the Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish, "shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects."

If you will give this section a second reading you will see that these general principles control: First, the construction and application of the Constitution and laws of the United States must, for the reasons already suggested, be left to the courts of the United States. Second, as the representatives of foreign powers are accredited to the United States and may not treat with the State authorities in any way, and as the United States must be answerable

for any injury or indignity to such representatives, cases affecting them must be tried by the courts of the United States. Third, as the regulation of foreign commerce and commerce between the States is given to Congress, and as maritime and admiralty cases may affect international relations, and the decisions in such cases should be stable and uniform, only the courts of the United States can appropriately deal with such questions. Fourth, the United States cannot permit the courts of another sovereignty to try cases for or against it—its own courts must obviously determine such cases. Fifth, in cases where the State courts might be, or might be supposed to be, subject to bias by reason of the interest of the State or of its citizens in the controversy, to the possible prejudice of another State or of its citizens, or of a foreign State or its citizens, the courts of the United States can give a hearing with greater assurance of impartiality, and, therefore, such persons should have the privilege, if they choose to exercise it, to bring their suits, if they are plaintiffs, in the United States Courts, or to remove them to those courts, if they are sued in the State courts.

A citizen of New York may sue a citizen of Ohio in the State courts of Ohio, but if he prefers, may sue in the United States Court for the proper Ohio district. The election is with him, if the

jurisdiction of the United States Court depends solely upon the fact that he is a citizen of one State and the defendant of another. But if what is called a "Federal question" is involved—that is, a question arising under the Constitution or laws of the United States—then the citizenship of the parties does not matter, for the subject of the suit gives the United States Courts jurisdiction. If the parties do not in the beginning of such a suit, or by the removal of it after it is brought, seek the proper United States Court, the State court may proceed to try the "Federal question," but after the Supreme Court of the State has passed upon it the case may be taken by writ of error to the Supreme Court of the United States for a final determination. The United States Courts, in the trial of cases, must often construe and apply the constitution and statutes of a State; and out of this power some conflict has occurred. The rule adopted by the United States Courts, with its exceptions, is comprehensively stated by Justice Bradley, in Burgess *v.* Seligman (107 U. S., 20), thus:

Diverse citizenship. Federal question.

Must construe State laws—The rule.

> The Federal courts have an independent jurisdiction in the administration of State laws, co-ordinate with, and not subordinate to, that of the State courts, and are bound to exercise their own judgment as to the

meaning and effect of those laws. The existence of two co-ordinate jurisdictions in the same territory is peculiar, and the results would be anomalous and inconvenient, but for the exercise of mutual respect and deference. Since the ordinary administration of the law is carried on by the State courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate, and the construction of State constitutions and statutes. Such established rules are always regarded by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is. But when the law has not been thus settled, it is the right and duty of the federal courts to exercise their own judgment; as they also always do in reference to the doctrines of commercial law and general jurisprudence. So, when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there has been no decision, of the State tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts, after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean toward an agreement of views with the State courts if the question seems to them balanced with doubt.

In a case involving the constitutionality of a tax law of Ohio, under the State Constitution, the

United States Court for the Sixth Circuit held the law unconstitutional. Afterward the Supreme Court of the State upheld the law, and the United States Court reversed its ruling and followed the State court. No contract rights were involved.

The Supreme Court has original jurisdiction of "all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party." That is, these cases may be begun in the Supreme Court. Other cases that reach the Supreme Court come, by appeal or writ of error, from one of the inferior courts of the United States or from the Supreme Court of a State.

Original jurisdiction of Supreme Court.

The Constitution gives to Congress, as we have seen, the power to institute such "inferior" courts as may be necessary. The general system adopted by Congress establishes the District Courts, the Circuit Courts, and the Circuit Courts of Appeals, the latter having been recently created. There are other special courts, such as the Court of Claims, the Courts of the District of Columbia, etc. The District Court is composed of a single judge, and the district of the whole or a specified part of a State. There is generally one district judge for each district, but to this rule there is an exception or two, there being now sixty-eight districts and sixty-five dis-

Circuit and District Courts.

trict judges. When the courts were first instituted (1789) there were thirteen districts. In 1801 provision was made for dividing the districts into six circuits, and for the appointment of three circuit judges each for five of them. In the following year this law was repealed, and a law enacted establishing six circuits, the courts to be held by one of the justices of the Supreme Court and the District Judge.

In 1837 the number of the associate justices of the Supreme Court was increased from five (the original number) to eight, and nine Circuits were established—one for each associate justice and one for the Chief-Justice. In 1863 an additional associate justice was provided for, and ten circuits were established, the policy having generally been to have as many circuits as there were justices of the Supreme Court—the Chief-Justice and each associate justice being assigned to a particular circuit—and to have the justices sit in the Circuit Courts when their other duties would permit. In 1866 the number of associate justices was reduced to six, and in 1869 was increased to eight. There were no circuit judges until 1869, when one was provided for each circuit; the Circuit Court being before held by the district judges, and an associate justice of the Supreme Court when he could be present. And

Changes in number of Justices.

even now a large part of the business of the Circuit Courts is transacted by the district judges sitting alone. The exact division in jurisdiction between the District and Circuit Courts of the United States cannot be briefly stated, but it will be enough to say that the Circuit Court has jurisdiction generally of cases in law and equity, cognizable in the United States Courts, where the amount involved, exclusive of interest and costs, is $2,000. It also has a criminal jurisdiction. The jurisdiction of the District Courts chiefly embraces criminal cases, admiralty cases, bankruptcy proceedings, suits for penalties, and the like.

Circuit Courts of Appeals.

In 1891 Circuit Courts of Appeals were established. The law provides for the appointment of an additional circuit judge in each judicial circuit, and creates a Court of Appeals, to consist of three judges. The Justice of the Supreme Court assigned to each circuit, and the Circuit and District Judges of each circuit are made competent to sit as judges in the new court, the Justice presiding, or in his absence the senior Circuit Judge. The judge who tried the case below is made incompetent to sit in the hearing of the appeal. This court was instituted to relieve the Supreme Court of the United States from an accumulation of business that rendered the prompt decision of cases impossible.

An appeal or writ of error direct from the Circuit Court or District Court to the Supreme Court is reserved in cases involving the jurisdiction of the court, final sentences in prize cases, convictions of a capital or other infamous crime, cases involving the construction or application of the Constitution of the United States, or in which the constitutionality of a law of the United States, or of a treaty, is drawn in question, and cases in which the Constitution or laws of a State are claimed to be in contravention of the Constitution of the United States. The Circuit Court of Appeals is given jurisdiction of other appeals. Decisions of the Circuit Court of Appeals are made final in certain cases, in others an appeal is allowed to the Supreme Court of the United States, and the Supreme Court may order any case pending in the Court of Appeals to be certified to it for a hearing.

The Court of Claims was established in 1855, and consists of a chief-justice and four judges. It sits at Washington and holds one term each year, beginning on the first Monday of December and continuing as long as the business may require. The judges receive an annual salary of $4,500, and hold office during good behavior. The jurisdiction of the court, speaking generally, extends to the hearing of claims against the United States—pension claims, war claims, and

The Court of Claims.

claims before rejected, being excluded—in cases not sounding in tort, where the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty—"if the United States were suable." The United States is not "suable" unless by law it consents to be sued. Before the establishment of the Court of Claims, Congress was burdened by the necessary consideration of vast numbers of private claims for the settlement and payment of which by the departments no provision had been made. In some cases the Court of Claims is authorized to enter a judgment—after finding the facts specially—and in other cases, referred to the Court by Congress or by one of the departments, a finding of facts only is made. Judgments of the court cannot, of course, be paid until Congress appropriates money for their payment. The French Spoliation claims, and the Indian Depredation claims — each class involving very numerous claims and very large sums of money in the aggregate—have been sent to the Court of Claims for adjudication. Appeals are allowed to the Supreme Court from the decisions of the Court of Claims.

The judges of the United States Courts have, with rare exception, been men of excellent legal ability and of high character. The bar has sometimes complained that judges were arbitrary, and

not always as suave and respectful in their treatment of the members of the bar as they ought to be. Perhaps there has been, in particular cases, ground for such complaints, but the cases have been few. Manifestations of rudeness and passion are inexcusable in a judge. He must be deferential if he expects deference. He should be patient and even-tempered, for the case is sure to go his way in his own court. And, on the other hand, the bar should always give its powerful aid to support the influence of the courts, for the Judicial Department is the "keystone" of our Government, and assaults upon it threaten the whole structure of the stately arch.

High character of Federal judges.

APPENDIX

CONSTITUTION OF THE UNITED STATES

WE the People of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose

three; Massachusetts eight; Rhode Island and Providence Plantations one; Connecticut five; New York six; New Jersey four; Pennsylvania eight; Delaware one; Maryland six; Virginia ten; North Carolina five; South Carolina five, and Georgia three.

When vacancies happen in the representation from any State, the Executive Authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

SECTION 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be pre-

sented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dry-docks, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

SECTION 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the Treasury, but in con-

sequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States. And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President

of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed, and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.] *

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to

* This clause is superseded by Article XII., Amendments.

the best of my ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated

times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before-mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State

from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the Ninth Section of the First Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

AMENDMENTS TO THE CONSTITUTION

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II.

A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger ; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb ; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Rep-

resentatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of

the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or holding any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

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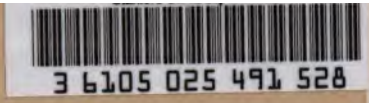
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